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The NATIONAL BANK OF SCOTLAND LIMITED

THE PRACTICE

OF

BANKING

EMBRACING THE CASES

AT LAW AND IN EQUITY

BEARING UPON ALL BRANCHES OF THE SUBJECT

BY

JOHN HUTCHISON.

VOL. I.

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The NATIONAL BANK OF SCOTLAND LIMITED

TO

JAMES MATHER, ESQUIRE

SOUTHPORT

WHO WITH DISTINGUISHED ABILITY AND

INDEFATIGABLE ZEAL

LONG DISCHARGED THE ARDUOUS DUTIES

AND OCCUPIED THE HIGH OFFICE

OF

BANK ACCOUNTANT GENERAL

This Work

IS

AFFECTIONATELY DEDICATED

BY

HIS OLD COLLEAGUE AND FRIEND

THE AUTHOR.

PREFACE.

As the result of a long, extensive, and varied practice, the Author ventures to hope that this and the volumes intended to follow will prove serviceable to the various members of the banking profession, for whom the work is more especially designed.

Much of the Author's knowledge and experience was acquired by him in his capacity of Acting Branch Manager of the Manchester and Liverpool District Bank, when that Bank was under the more direct management of the late Mr. Philip Thomson, Manager and Inspector, and the late Mr. James Miller, Accountant, and subsequently Manager, two of the ablest, soundest, and most accomplished bankers of their time, and to both of whom the Bank has been so much indebted for its success, increased as it has been under the present excellent management, which has raised the institution to the first place it undoubtedly holds in the leading rank of provincial Banks.

This work will consist of three volumes, each of which is intended to be a complete treatise in itself on the subjects with which it deals. The other volumes will be published hereafter, and as

rapidly as the engagements of the Author will permit. The second volume will be devoted principally to matters relating to Inspection, and Securities deposited for advances, and the third volume will be exclusively a book of Precedents.

In adopting more or less the form of instructions, it has been considered that the work in that shape would best meet the end the Author had in view, and he trusts that most if not all he has advanced will be found consistent with approved banking practice. Most of the forms introduced have been prepared by himself, and are given in the hope that they will be found useful and convenient, besides saving trouble and uncertainty in the hurry and pressure of business.

Some of the more ordinary legal forms have in several respects been amended and rendered better adapted to banking practice, and the more important forms—the deeds, mortgages, and other documents of that character to be afterwards adduced in detail—have been framed more or less under the supervision of the Author, and additional clauses introduced into them with a view to render them more complete as securities, and to serve as a further safeguard and protection to the banker.

The Author has endeavoured to overlook no point of importance in connection with the practical part of banking ; and one of his chief aims will be accomplished should these volumes tend in any way to lead to uniformity in banking practice.

Great care and much time have been expended in considering and noting the decisions of the Courts

of Law and Equity bearing upon the subject of the Author's remarks, and many of the important decisions are given, in the foot-notes, in detail, so as to afford a more comprehensive view of the points referred to, as well as to establish the accuracy of the propositions and statements made in the text.

The distinction between Law and Equity, as administered until recently in separate courts, appears to have been in a manner peculiar to England. A similar distinction was, however, recognised by the Romans; and the Roman Edictal Law, or *Jus Prætorium*, corresponding it may be said with our Equity, originated like it in the necessary generality of law, and the consequent severity and hardship of its rigid application, and was promulgated by the *prætors* for the purpose of tempering and mitigating the rigour of the standing law. But the power of dispensing the edictal law and the *jus civile*, or standing law, centered in the same functionary. In this country, of the two tribunals in the Court of Chancery, one was devoted exclusively to the administration of Equity; and of the origin of this jurisdiction it is said by Blackstone that it seems probable that when in early times "the courts of law, proceeding merely upon the ground of the king's original writs and confining themselves strictly to that bottom, gave a harsh or imperfect judgment, the application for redress used to be to the king in person assisted by his privy council (from whence also arose the jurisdiction of the Court of Requests, which was virtually abolished by the statute 16 Car. I. c. 10), and they were wont to refer the matter either

to the Chancellor and a select committee, or by degrees to the Chancellor only, who mitigated the severity or supplied the defects of the judgments pronounced in the courts of law, upon weighing the circumstances of the case. This was the custom not only among our Saxon ancestors, before the institution of the aula regia (or Supreme Court of Judicature), but also after its dissolution, in the reign of King Edward I, and perhaps during its continuance, in that of Henry II." Com. B. III, c. 4.

About the close of the reign of King Edward III the separate jurisdiction of the Chancery as a Court of Equity was established, but from the circumstance of ecclesiastics or courtiers being generally appointed to the office of Chancellor, it was not until a long period afterwards, and until the great seal was intrusted to eminent lawyers, that the administration of Equity was conducted on proper principles and reduced to something like a regular judicial system. It was principally in its modes of procedure and relief and in its exclusive jurisdiction in certain matters, derived from the narrow decisions of the law tribunals in former times, that a Court of Equity differed from a Court of Law. In some instances it served to assist the jurisdiction of the law courts, as by restraining a party from improperly advancing some claim at a trial which would prevent a fair decision, and by compelling him on oath to disclose matters material to the right of the other party. And it also counteracted judgments at law obtained through fraud, but this not by impeaching or reversing the judgment but by prohibiting the

plaintiff from taking advantage of it. In cases of fraud, error, accident, account, partnership, and in mercantile transactions generally, a Court of Equity had a concurrent jurisdiction with a Court of Law. Its exclusive jurisdiction was exercised mostly in cases of trust and confidence, while its auxiliary jurisdiction was chiefly exercised when the necessary evidence could not be obtained by the courts of Law. It was in the administration of Equity that the principal business of the Court of Chancery consisted; the business of its other tribunal, the Court of Common Law, having been inconsiderable. The Lord Chancellor, the three Vice-Chancellors, and the Master of the Rolls were the Judges who administered Equity, and each had a separate court. The Lord Chancellor, however, had the power of altering or reversing the decrees of the Master of the Rolls and the Vice-Chancellors, while from his own decree an appeal could be made to the House of Lords. Formerly the Court of Exchequer had also an equitable jurisdiction like that of the Court of Chancery, but this was abolished by the 5 Vict. c. 5.

In Scotland the Court of Session, as the supreme civil court is called, combines within itself all the functions of Law and Equity.*

* In the very excellent "Manual of Equity Jurisprudence," by Josiah W. Smith, the following observations in connection with the nature and extent of Equity occur in the Introduction, 11th ed.: "To explain the true nature of Equity Jurisprudence with brevity, perspicuity, and accurate precision, is a task of great difficulty, on account of the mixed character of the science, and the immense extent of learning which for this purpose it is necessary for the mind to survey at one and the same time." "Equity Jurisprudence in the specific and technical sense of the term, as contradistinguished from natural, abstract, and universal Equity, and from Law and the Statutory Jurisprudence of the Court of Chancery, may be described to be a portion of justice or natural Equity, not embodied in legislative enactments or in the rules of the Common Law, yet modified by a due regard thereto, and to the complex relations and convenience of an artificial state of society, and

Now, although Law and Equity are not fused, the different courts by which Law and Equity were administered are consolidated into one court by the Supreme Court of Judicature Acts 1873 and 1875, the 36 and 37 Vict. c. 66, and 38 and 39 Vict. c. 77, by which the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, and the Court for Divorce and Matrimonial Causes are united, constituting one Supreme Court of Judicature in England, consisting of two permanent Divisions, "Her Majesty's High Court of Justice" and "Her Majesty's Court of Appeal," each being declared a Superior Court of Record. By section 31

administered in regard to cases where the particular rights in respect whereof relief is sought come within some general class of rights enforced at Law, or may be enforced without detriment or inconvenience to the community, but where, as to such particular rights, the Courts of Law cannot, or originally did not, clearly afford any relief or adequate relief, at least not without circuity of action or multiplicity of suits, or cannot make such restrictions, adjustments, compensations, qualifications, or conditions, as may be necessary in order to take due care of the rights of all who are interested in the property in litigation," "In the most general sense, Equity is synonymous with natural justice. But Equity, as contradistinguished from Law, and as administered in our courts of Equity, has a much narrower and an otherwise different signification. Many matters of natural justice, by the Equity Jurisprudence of this and every other civilized nation, are left to be disposed of in *foro conscientiae*, from the difficulty of framing any general rules to meet them, and from the mischief and inconvenience which would arise from attempting judicially to enforce such duties as charity, gratitude, and kindness, or even positive engagements, where they are not founded on a valuable consideration, or, at least, on what is deemed a good consideration," "The truth, then, appears to be this: first, that a large portion of natural Equity is left to be administered in *foro conscientiae*; because, in addition to the difficulty of propounding precise rules, applicable to all cases, a greater detriment and inconvenience to the community would probably ensue from attempting to enforce it in the public courts, than from leaving it to the decision and the power of conscience and to the various motives by which mankind are ordinarily influenced. Secondly, that another large portion of natural Equity, in a modified form, is administered by the courts of Law, and is denominated Law, in contradistinction to what is technically termed Equity. And thirdly, only a portion, therefore, of natural Equity, and that in a modified form, is administered in a Court of Equity; and that portion is specifically and technically called Equity, in contradistinction as well to the two other portions of Equity, or to natural, abstract, and universal Equity or justice in general, as to legislative enactments, and arbitrary, feudal, or simply conventional rules."

of the former Act it is enacted that for the more convenient despatch of business in the High Court of Justice there shall be five Divisions, called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division. And by section 53 it is enacted that every appeal to the Court of Appeal shall be heard or determined either by the whole Court, or by a Divisional Court consisting of any number not less than three of the Judges, and that any number of such Divisional Courts may sit at the same time. By section 54 it is declared that no Judge of the Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was himself a member.

By section 24 it is enacted that Law and Equity shall be concurrently administered, subsection 4 providing that the two Courts shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of the Act, and, by subsection 7, they shall have power to grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to

in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided. By section 25, subsection 11, the important enactment is made that "*generally, in all matters in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.*"*

* Part VI of the same Act deals with the jurisdiction of the inferior Courts, and its sections are in these terms :—“ SEC. 88. POWER BY ORDER IN COUNCIL TO CONFER JURISDICTION ON INFERIOR COURTS.—It shall be lawful for Her Majesty from time to time, by order in Council, to confer on any inferior Court of civil jurisdiction the same jurisdiction in Equity and in Admiralty respectively as any County Court now has or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed. ——89. POWERS OF INFERIOR COURTS HAVING EQUITY AND ADMIRALTY JURISDICTION.—Every inferior Court which now has, or which may, after the passing of this Act, have jurisdiction in Equity, or at Law and in Equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant, in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice. ——90. COUNTER-CLAIMS IN INFERIOR COURTS, AND TRANSFERS THEREFROM.—Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim : Provided always that in such case it shall be lawful for the High Court, or any Division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any Division thereof ; and in such case the record in such proceeding shall be transmitted by the Registrar, or other proper officer of the inferior Court, to the said High Court, and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein. ——91. RULES OF LAW TO APPLY TO INFERIOR COURTS.—The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.”

With reference to the High Court and its various Divisions, it may be added that so much inconvenience has resulted from the arrangement, that we believe a considerable change is contemplated shortly, both to economise judicial time and labour, as well as to insure greater simplicity and order in conducting the business of the Court.

In conclusion, it may be observed that, in consequence of the Author's onerous and important duties and engagements, the progress of the work, begun many years ago, has been considerably interrupted ; but it is hoped that, in its present shape, it will be found as complete and connected as its wide scope and the nature and variety of its subjects permit, and that its arrangement will prove useful and convenient.

JOHN HUTCHISON.

PORTOBELLO, EDINBURGH,

2ND OCTOBER, 1880.

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THE

LAW, EQUITY, & PRACTICE OF BANKING.

PART I.

ACCOUNTS.

Each account should be headed with the name, vocation, and address of the account-holder, or of each holder, if the account be a joint one.

Heading.

CORPORATIONS AND OTHER PUBLIC BODIES, COMPANIES, AND ASSOCIATIONS.

From the great and increasing number of these, and the nature of their constitution, as well as the novel character of some, it is a matter of the utmost importance to the banker, in the varied relationships into which he may be brought with them, to be well assured of his position, and to take every precaution for his protection, rendered all the more requisite from the inchoate and necessarily undefined and uncertain state of the law in connection with many of them.

Corporations
&c.

Corporations created by Royal Charter or Act of Parliament, or in some instances by Prescription,* and the whole not aptly styled, in legal phraseology,

* As in the case of those long-established close corporations or municipal institutions which have not availed themselves of the perfecting act of William IV.

Corporations, &c. "Artificial Personages," are, it may be proper to keep in view, distinguished from ordinary or private partnerships, by the law acknowledging them only as bodies corporate, and taking no cognizance of the individual members who are free from liability in their private capacity for the contracts of the corporations, their share in the capital only being at stake; while with ordinary or private partnerships the law does not regard the partnership, but the individual members of it, who are therefore answerable to the last farthing of their property for the debts of the partnership.

Common Seal. As evidencing the assent of a corporation to its contracts, and to render them valid, its COMMON SEAL, the symbol of its incorporation, must be used ; but where, as with associations or companies incorporated for mercantile or trading purposes, the use of the seal would occasion inconvenience and unduly impede business, the necessity of its adhibition is waived, and it is considered that in the drawing, accepting, and indorsing of bills of exchange or promissory notes, as well as in acts of ordinary and daily occurrence, the seal of the trading corporation may be dispensed with.

Signatures. But while the seal may be thus unnecessary, it is essential that there should be the proper signatures to bind the corporation.

To put the bank on as secure a footing as possible, the manager should, therefore, on opening an account with a trading joint-stock company or corporation, have a copy handed to him of a minute of the meeting of the directors, embracing resolutions to the following effect :—

- I. That the company open an account with the bank.
- II. That the account be operated upon by cheques signed by certain officers of the company duly named and designated.
- III. That bills and notes be drawn, accepted, and made by certain named and designated officers.
- IV. That negotiable instruments, payable to the company, be indorsed for the company by an officer or officers duly named and designated.

V. That a copy of these resolutions, under the common seal, and signed by the chairman, be handed to the bank, together with specimens of the necessary signatures.

Corporations,
&c.
Signatures.

And should an advance be at once made to the company, pending its being properly secured, the following should be embodied in the minute :—

That the account be opened by such advance from the bank, which is authorized to debit the account, with interest and charges thereupon, in the usual way.

Attached to this copy will be the certificate of the chairman that it is a true extract from the minute book of the company, and opposite his signature will be impressed the common seal of the company, the requisite specimens of the signatures being subjoined.

The manager should also furnish himself with a copy of the articles of association of the company for perusal, and pay particular attention to that portion of them relating to the management of the business of the company, and above all to the powers vested in the directors.

On a change in the signatories, due intimation by properly certified copy minute, or resolution, under the common seal, containing new specimen signatures, should be received from the company.

The mode of signing, so as to properly bind the company, is of great consequence, as the decisions of the Courts have been of a very conflicting character where instruments have been irregularly signed, associations having under very similar circumstances been sometimes held liable, and at other times exonerated, the liability falling only upon the officers signing. In certain cases liability has attached to neither corporation nor officers.

The surest mode is to have the expression "for" or "on behalf of" used before the name of the company, with "director" written after the signature of the director, and "secretary" after that of the secretary, the whole following or being immediately connected with each other, and kept distinct from the body of the instrument, which will

Corporations,
&c.
Signatures.

thus clearly purport to be that of the company. Or the following to an acceptance of a bill may be cited as being a still more unexceptionable signature :—

Accepted for and by order of the.....
Company Limited.

A. B., Director } of and on behalf of the Company.
C. D., Secretary }

As instances of the strictness with which signatures have been sometimes regarded by the Courts, it may be noted that in an action by an indorsee against J. and S., to whom a bill was addressed thus: "To Messrs. J. and S., Joint Managers of the Royal Mutual Marine Insurance Association, London," and signed by them as follows: "Accepted J. J., W. S., as Joint Managers of the Royal Mutual Marine Association, London." J. and S. were held personally liable as acceptors, the introduction of the word "as" in the acceptance making no difference with respect to their liability. And in the case of Trustees of a Building Society, where a promissory note was in this form :—

"£200. Gateshead, Oct., 18, 1864.

"On demand we promise to pay Mr. J. A. two hundred pounds value received, for the Second Gateshead Provident Benefit Building Society, and interest thereon at 5 per cent. per annum, payable half-yearly.

G. M.,
C. D. G., } Trustees.
J. N.,
T. N., Secretary."

it was held that G. M. and all the others, and not the society, were personally liable upon the note.

And it is likewise to be kept in view that, in the absence of evidence to the contrary, one member of a joint-stock company cannot bind the others by negotiable instruments. Thus, where a bill was drawn by one of the directors of a Gas Company upon the other directors, the defendants in the case, and the form of the acceptance was: "Accepted for self and Directors. E. N., Chairman," this acceptance was held as not binding upon the defendants. And where a bill purported to be drawn and accepted by a Mining

Company, it was held incumbent upon the plaintiff, who was an indorsee for value, to prove that the directors had authority to bind the other members by drawing and accepting bills of exchange, and that not having produced the deed of co-partnership, nor given any evidence to shew that it was necessary for the company, or usual for other similar mining companies, to draw and accept bills, and still less to accept bills of such a form as the one in question, he was not entitled to recover. The bill, in effect a promissory note, was as follows:—

“£300.

Redruth, March 30, 1826.

“Two months after date pay to the order of Mr. T. T. three hundred pounds, value received as advised.

“For the Cornwall and Devonshire
Mining Company”

“To the Cornwall and Devonshire
Mining Company,
Lombard Street, London”

“R.W.

and accepted for them by J. W., their secretary.

Though in the case of ordinary trading partnerships the law implies that one partner may bind another upon bills, because the drawing and accepting of these are necessary incidents of their trade, it does not follow that it is requisite to draw and accept for the purpose of carrying on the business of mining concerns—these being regarded in law as not regular trading companies, as are also gas, waterworks, cemetery, salt and alkali, and salvage companies.* See cases cited in *Bateman v. Mid-Wales*

Companies
with Limited
Powers.

* The distinction between ordinary trading corporations and corporations created for specific purposes is thus pointed out in *Lindley on Partnership* i, 213, 214, cited in *Bateman v. Mid-Wales Railway Company*, *supra*, “It is clearly settled that any member of an ordinary trading partnership can bind the firm by drawing, accepting, or indorsing promissory notes in its name,” but “with respect to partnerships which are not trading partnerships, the question whether one partner has any implied authority to bind his co-partners by putting the name of the firm to a negotiable instrument, depends upon whether the business of the partnership is such that dealings in negotiable instruments are necessary for its transaction, or are usual in partnerships of the same description. *Dickinson v. Valpy* 10 B. & C. 128. In the absence of evidence shewing necessity or usage, the power has been denied to one of several mining adventurers, *Brown v. Byers*, 16 M. & W. 252; quarry-workers, *Thicknesse v. Bromilow*, 2 Cr. & J. 425; Farmers, *Greenslade v. Dower*, 7 B. & C. 635; and Solicitors, *Hedley v. Bainbridge*, 3 Q. B., 316; *Levy v. Pyne*, Car. & M. 453; *Harman v. Johnson*, 2 E. & B. 61, 3 Car. & K. 272.”

Corporations,
&c.
Signatures.
Companies
with Limited
Powers.
Railway
Companies,
&c.

Railway Company, 8th May, 1866, 1 L. R., C. P. C. 505 and 510, and in which action, along with the National Discount Company Limited, and Overend, Gurney, and Company Limited, against the same railway company, it was held that it was not competent to a company incorporated in the usual way for the formation and working of a railway, to draw, accept, or indorse bills of exchange. The declaration in each of the actions charged the company as the acceptors of several bills of exchange, drawn respectively by John Watson and Company, and purporting to be accepted in the following form: "Accepted by order of the Board of Directors, and payable at the Agra and Masterman's Bank. John Wade, Secretary," with the seal of the company annexed. It was proved or admitted in each case, that the company had actually commenced business as a railway company, and that there was a resolution of a board of directors authorizing the acceptance of the bills in question as above.

"These cases," said Byles, J., in delivering judgment, "are of great importance, raising, as I believe they do for the first time, the precise question whether it is competent to a railway company to accept bills of exchange. No precedent has been cited in support of the affirmative, and I cannot but feel that if we intimated any doubt upon the matter, the market would in a short time be inundated with acceptances by railway companies. Only three instances can be cited of the acceptance of negotiable instruments by corporations. The first is that of the Bank of England; but that establishment was incorporated for the very purpose, its promissory notes and bank post bills forming a very large portion of the circulating medium of this country. The second is that of the East India Company; there the authority to draw, accept, and indorse bills and notes, if not created, is at all events ratified and confirmed by two Acts of Parliament, the 9 and 10 Wm. III, cap. 44, and 55 Geo. III,

cap. 155. The third instance is that of *Slark v. Highgate Archway Company*, 5 Taunt. 792, where the company had express authority to give bills. Excepting these, there is no authority to show that a common law corporation can draw, accept, or indorse bills of exchange; and it seems to me that there would be more difficulty in the case of a corporation created by statute. It is clear from the language of Bayley, J., in *Broughton v. Manchester Waterworks Company*, 3 B. and A. 1, that a company constituted for the construction and maintenance of waterworks could not issue bills of exchange. Therefore, even if we knew nothing more of this company than that it was formed for the purpose of constructing and working a railway, it is plain that it could have no power to accept bills."

And Montague Smith, J., said: "I am clearly of opinion that it was not within the competency of this company to accept bills. It is a company incorporated for the formation of a railway, with a limited capital and limited powers of borrowing money. If such a company had power to accept bills of exchange, the consequence would be either that they might bind themselves by acceptances to an unlimited extent, or there must in each case be an enquiry whether the bill was given for the payment of a just debt, or for a purpose not warranted by their incorporation. I think it was not the intention of the legislature that they should accept bills at all. The shareholders advance their money upon the faith of the limited borrowing powers.

"This limit would be illusory if the directors could be held bound by acceptances. There is no authority to shew that they have power to accept, and there is much authority in analogous cases the other way. It has been held that mining companies, waterworks companies, gas companies, salt and alkali companies, and many others, all more in the nature of trading companies than this company, are

Corporations,
&c.
Signatures.
Companies
with Limited
Powers.
Railway
Companies,
&c.

Corporations,
&c. incapable of drawing, accepting, or indorsing bills of exchange.”*

Signatures.
Companies
with Limited
Powers.
Railway
Companies,
&c. Even a deed will not bind the Company if it be ultra vires. South Yorkshire and River Dun Company *v.* Great Northern Railway Company 9 Ex. 55, 84, 22 L. J., N. S. 305; Chambers *v.* Manchester and Milford Railway Company, 5 B. and S., 588, 33 L. J., Q. B. 268.

And in Burmester *v.* Norris 6 Ex. 796, 21 L. J., N. S. 43, it was held that a mining company could not exceed the borrowing powers conferred by its deed, even for the necessary purpose of working the mines.

Powers of
Companies to
be ascertained. In connection then with associated bodies or companies, the manager should inform himself fully as to their powers and liabilities, by consulting the acts of parliament, charters, deeds, settlements, agreements, articles of association, or rules, as the case may be, under which they are respectively established or constituted.

And it may be stated in addition to what has been already said, that of such force are articles of association regarded, that the House of Lords held, in the case of the Ashbury Railway Carriage and Iron Company Limited *v.* Riche, 8 June, 1875, that a joint-stock company incorporated under a memorandum, according to the Companies Act, 1862, could not, even by the unanimous ratification of all its shareholders, give validity to a contract which goes beyond the scope and object of its memorandum of association.

POOR LAW UNIONS, OR GUARDIANS OF UNIONS.

Unions. These are a corporation by statute, and their proceedings are governed by orders issued by the Poor Law Board.

* By section 19 of 7 and 8 Vict. c. 85, it is enacted that, “any railway company issuing any loan note, or other negotiable or assignable instrument, purporting to bind the company as a legal security for money advanced to the said railway company, otherwise than under the provisions of some act or acts of parliament, authorizing the said railway company to raise such money, and to issue such security, shall for every such offence forfeit to her Majesty a sum equal to the sum for which such loan note or other instrument purports to be such security.”

By the General Order for Accounts, the treasurer of the Union must keep punctually and accurately a book according to the prescribed form, in which must be entered an account of all monies received and paid by him on account of the Guardians. He must balance this account quarterly, and cause the book to be laid before the Board of Guardians once every month, or oftener if required by the Guardians to do so, and before the Auditor at the time of the audit.

The cheques of the guardians must be signed by the presiding chairman and two guardians, and countersigned by the clerk to the guardians; and great care must be observed in seeing that these instruments are in every way regular.

In the absence of the clerk one of the vice-chairmen or some other guardian must countersign the cheques passed at the meeting of guardians.

And, in further pursuance of the orders of the Poor Law Board, it is to be noted that the treasurer to the Union must cash cheques to the payee or his order only, and not upon a procuration indorsement.

And moreover, that inasmuch as the General Order of the Poor Law Board prescribing the form of cheques applies only to those drawn by the guardians for sums greater than £5, all those drawn for sums below that amount are liable to stamp duty. But it is a very common practice for the various Unions to issue cheques for sums under the prescribed amount, unstamped, a practice which they do not seem inclined to abandon, so long as no objection is raised to it by the authorities. The cheques appear to be freely passed by the auditors.

On the absence of the clerk, a copy resolution, certified by the presiding chairman, naming the guardian appointed to act for the day in place of the clerk, and empowering him to countersign cheques, should be handed to the bank.

Signatures.

Miscellaneous
Accounts.

Of signatures generally, those on behalf of FRIENDLY SOCIETIES AND THEIR LODGES consist usually of three or four of the trustees and secretary, or of two trustees with treasurer and secretary.

GAS COMPANIES, the presiding chairman, one of the directors, and secretary.

HIGHWAY BOARDS, the presiding chairman, two waywardens, and clerk.

LOCAL BOARDS, the presiding chairman, two members, and clerk.

SCHOOL BOARDS, the same ; and vide Schools of Art and School Accounts, various ordinary, infra.

The names and signatures of the whole of the trustees, with those of the other officers named, of the first-mentioned Societies and Lodges, those of the directors and secretary of the companies, and those of the members and clerks of the several Boards, should be conveyed to the bank by copy relative resolution, signed or certified by the respective chairmen, or by the respective presidents, grand masters, or chairmen, if from the Societies and their Lodges, the requisite seal being in each case adhibited, and all changes in the signatories should be intimated in the same way, accompanied by specimens of the signatures of the new officers.

With the following and other kindred accounts the authorizations to the bank need not be made under seal.

In the case of

BUILDING SOCIETIES' ACCOUNTS, the drawing of cheques, as prescribed by the Rules of those Societies is generally done by the chairman and two trustees, or two directors, the secretary countersigning. The signatures of all who have power to sign should accompany the copy resolution, to be signed or certified by the chairman, and handed to the bank.

BUILDING FUND AND IMPROVEMENT FUND ACCOUNTS.

These are generally under the supervision of a

Committee, and the signatures of the members, with those of the treasurer and secretary, should be given to the bank, with copy resolution signed or certified by the chairman of the committee, and announcing the number to sign. The signatories are usually the chairman and another member, the cheque being countersigned by the treasurer or secretary.

Signatures.
Miscellaneous
Accounts.

CHURCH ENDOWMENT FUND ACCOUNTS, the same.

CHARITIES ACCOUNTS. These are conducted by trustees, one of whom, as well as their treasurer, usually sign. The signatures of all should be given to the bank with copy resolution from their chairman.

COUNTY COURT ACCOUNTS. In name of the Registrar, who will, by writing, authorize a substitute to sign for him when absent, the sums to be drawn being in this case generally limited to a certain amount.

DIOCESAN FINANCE ASSOCIATION ACCOUNTS are under the conduct of a finance committee, two members of which, with the secretary, usually sign. Signatures of all to be given to the bank with copy resolution from chairman.

DISPENSARY ACCOUNTS. Generally operated upon by a treasurer, whose authority is derived from a committee, the Chairman of which will make the necessary announcements to the bank.

ECCLESIASTICAL DISTRICTS ACCOUNTS under control of a committee, two members of which to sign, and the honorary secretary to countersign. Signatures of all the members of committee to be furnished by the chairman.

FLORAL AND HORTICULTURAL ACCOUNTS. Generally operated upon by a treasurer, chosen by a committee, chairman of which will make the necessary announcements to the bank.

RIFLE CORPS ACCOUNTS. See Volunteers' Accounts, infra.

SCHOOLS OF ART ACCOUNTS. These are conducted by a Council, one of the members of which usually signs

Signatures.
Miscellaneous
Accounts.

along with their treasurer and secretary. Signatures of all the members of the council to be furnished by the chairman.

SCHOOLS ACCOUNTS, various ordinary. These are usually conducted by a committee appointed by the managers. One of the committee, along with their treasurer, generally sign, and the signatures of all the members of the committee should be furnished to the bank by the chairman, with his copy resolution or extract from the minute book.

If no minutes of meeting be kept, and no committee be appointed, as is the case with the smaller class of schools, the account is generally operated upon by a treasurer, appointed by the managers, all of whom should sign in their authorizations to the bank.

VOLUNTEER ACCOUNTS. These are conducted by a finance Committee, two members of which usually sign. The signatures of all the members should accompany the requisite copy resolution or extract minute to be furnished by the chairman to the bank.

The requisite particulars as to the signatories will, of course, follow the headings of all accounts of the above description.

Companies
Act, 1862.

It should be remembered that by the 25 and 26 Vic., cap. 89, passed 7th August, 1862, and which came into operation on the 2nd November of that year, and is known as "The Companies Act, 1862;" no company, association, or partnership consisting of more than ten persons can be formed for the purposes of banking, or of more than twenty persons for carrying on any other business unless incorporated under that Act, or formed under some other act, or constituted by letters patent, or for working mines within and subject to the jurisdiction of the stannaries. And that any seven or more persons may, by subscribing their names to a "Memorandum of Association," and otherwise complying with the act, form a company with or without limited liability.

This statute extends the principle of limited liability introduced by the 18 and 19 Vic., cap. 133, known as "The Limited Liability Act, 1855," and also provides inter alia, for the formation of companies limited by guarantee, and the conversion of shares into stock, and consolidation of existing shares into shares of a larger amount. And it, along with the Amending Act of 1867, 30 and 31 Vic., cap. 131, which embraces entirely new provisions as well as modifications of old ones, and the further Amending Act of 1877, 40 and 41 Vic., cap. 26, explanatory of the powers of a company to reduce its capital, and containing an enactment relative to the reception of copies of documents certified by the Registrar, as legal evidence, are, with the Banking Limited Liability Act of 15th August, 1879, 42 and 43 Vic., cap. 76, the statutes by which joint-stock companies generally are now regulated.

Of the Amending Act of 1867, 30 and 31 Vic., cap. 131, it may be noted that:

Sections 4 to 8 contain provisions for increasing the liability of the directors, or managers or managing directors; being, in fact, a partial adoption of the French system of partnership, *en commandite*.

Sections 9 to 22 provide for the reduction of capital and shares of limited companies, as under the principal act of 1862 the nominal capital, however inordinate, could only be reduced by a voluntary winding up, and a reconstitution of the company.

Section 23 exempts associations "formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object," and not for the purposes of gain, from the necessity of using the word "limited."

Section 26 enacts that a "Company shall on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest in the same manner and

Companies
Acts, 1862 to
1879.

Amending
Act, 1867.

subject to the same conditions as if the application for such entry were made by the transferee."

Sections 27 to 36 relate to share warrants to bearer, and which limited companies only have the power of issuing, and

Section 37 relates to the making of contracts, and is as follows:—

"Contracts on behalf of any company under the principal Act may be made as follows, (that is to say) :

"(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner, varied or discharged.

"(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged.

"(3.) Any contract which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.

"And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be."

Unregistered
Company.

In the case of *Harris v. Amery*, 20th November, 1865, 1 L. R., C. P. C. 148, where forty-six persons entered into a farming and grazing partnership, and the partnership was not registered under the Companies Act, 1862, it was held to be an illegal association, Willes, J., observing : "It should seem by the 25 and 26 Vic., cap. 89, sec. 4, that the legislature, viewing the frauds which had been committed by large companies, and the great inconvenience which was found to

arise by reason of the difficulty of enforcing claims and settling accounts between surviving members and executors of deceased members, and otherwise, have thought fit to determine that no company, association, or partnership, consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company or its members, unless registered under the Act. And I think it has done that by language which does not admit of any reasonable doubt. It is unnecessary to refer to authorities to shew that "business" has a more extensive signification than "trade." The earlier Bankrupt Acts did not embrace farmers; but it was never doubted that farming was a "business," though not a "trade." Banking is not strictly a trade.* Where land comes to a number of persons by operation of law, they cannot be said to be partners, and they may consistently with the Act farm it. But when we find an association like this, which is rendered illegal by an Act of Parliament, we cannot take notice of the agreement under which they became tenants, for the purpose of establishing a right in a court of law, or hold that the occupation by one of their body is an occupation by all the members of the illegal association."

It may be proper to observe here, with regard to the use of the name of a limited company, it is, for the better protection of creditors, enacted, by section 41 of the Companies Act, 1862, that every company, whether limited by share or by guarantee, must affix its name in a conspicuous

Publication
and use of
Name of
Limited
Company.

* As was observed in the course of argument, "trading" has reference only to the buying and selling of goods.

For the proper and successful practice of banking, as now conducted, there are required with the acuteness and sagacity of the man of business, both the special knowledge of the lawyer as well as the erudition and general information necessary to a proper qualification for the liberal and learned professions with which banking may now be legitimately classed. Superadded to the above knowledge on the part of the banker is the necessity of his being perfectly familiar with the principal features and conditions of all branches of trade and commerce, and in many instances with the details of the leading industries of the country.

Publication
and use of
Name of
Limited
Company.

Penalties for
omissions.

Liability of
Bank of Issue
unlimited in
respect of its
Notes.

position, in letters easily legible, on the outside of every place in which it carries on its business, and must have its name engraved on its seal, and mentioned in all official publications, and in all bills of exchange, promissory notes, cheques, and orders for money, endorsements, etc., purporting to be signed by, or on behalf of, the company, under penalty in failure, by section 42, of £5 for every day that the name does not appear outside the place of business, every director and manager being also liable to the like penalty ; "and if any director, manager, or officer of such company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs, or authorizes to be signed, on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money, or goods, or issues, or authorizes to be issued, any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of £50, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company." It may be noted that, as "limited" is part of the name of the company, that word should not differ from the rest of the title by being expressed in letters of smaller size, or being placed within brackets.

And that, by the Banking Limited Liability Act of 1879, section 6, repealing section 182 of the Companies Act, 1862, "a bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes ; and the members thereof shall continue liable, in respect of its notes, in the same manner as if it had been registered as

an unlimited company ; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company. For the purposes of this section, the expression, ‘the general assets of the company,’ means the funds available for payment of the general creditor, as well as the note-holder.”

Liability of
Bank of Issue
unlimited in
respect of its
Notes.

And that “it shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable, in respect of its notes, in the same manner as if it had been registered as an unlimited company.”

It may be added, that although a joint-stock company ^{Title.} is a corporation, it was held, in a case decided before the passing of the above acts, that a company could not be registered under that title.

EXECUTORS OR ADMINISTRATORS.

Executors and Administrators, however numerous, are regarded in law as one person, the acts of one of the ^{Executors or Administrators.} number being deemed the acts of all. When the account, therefore, is held by executors or administrators, it is sufficient that one of their number sign “for self and co-executors,” or “for self and co-administrators,” as the case may be, unless notice has been received that no payments are to be made excepting on the signatures of a certain number, or of all, in which case the requisite particulars of the notice should appear under the heading of the account.

It has been judicially decided that where three executors have an account in their names, the bank may refuse

Executors or
Administrators.

Borrowing.

payment of a cheque drawn by one of them if it has received notice from any of the others not to part with the money.

And after some conflict of opinion, and on a reversal of previous judgments, it appears to be now clearly established that an executor cannot pledge the credit of his testator's estate generally, so as to make the person with whom he contracts a creditor of the estate. The manager, therefore, should be very guarded in his transactions with executors or administrators, as, should he suffer the accounts of such persons to be overdrawn, the bank can only look to the executor or administrator personally, and cannot claim against the goods or estate of the testator or intestate.

If an executor, however, be authorized by the will to realize the real estate, he may pledge a specific part of such estate, but should this prove insufficient to repay the advance, liability for the difference will only attach to him and not to the testator's estate. *Farhall v. Farhall*, L. R. 7 Ch. Ap. 123.

GOVERNMENT ACCOUNTS.

Government
Accounts.

The headings should be, with reference to the CUSTOMS. Customs Revenue for the port of

per Collector.

INLAND REVENUE. Inland Revenue for the district of per Collector.

POST OFFICE. H.M. Postmaster-General.

PUBLIC STAMPS. These are now in the hands of the Inland Revenue department, and there is no separate account in connection with them.

On the

Customs.

CUSTOMS account there will be neither interest nor commission, and the withdrawals in favour of the Receiver-General are for drafts at 21 ds./d.

The other withdrawals should be in small amounts for office or local purposes, and the account should always be maintained to the credit. If a fair balance

can be kept continuously on hand, and the operations are not very numerous, drafts at a less currency, but not under 10 ds./d., may be furnished.

And, as to the INLAND REVENUE ACCOUNT, the above remarks will be also applicable.

POST OFFICE ACCOUNT. Formerly the account was kept in name of the local postmaster, and the withdrawals were exclusively by drafts in favour of the Postmaster-General at 21 ds./d., on which nine days' interest was allowed at the average rate, half-yearly. There was no other interest allowed on the account, and no commission was charged.

Under the new arrangement made with the General Post Office Department, the account is now kept in the name of H.M. Postmaster-General himself, and for each amount received from the local postmaster for credit of the account the Bank gives its accountable receipt in these terms :—

“No.

“The Provincial Bank,

“Branch.

“day of , 18 .

“Received on account of Her Majesty's Postmaster-General the sum of , to be accounted for in London.

“For the Provincial Bank.

“£.....

“....., Manager.”

Every ten days the accumulated amounts are paid over to H.M. Postmaster-General's credit with the Bank of England in London, by means of the London agents of the Bank. The entries for these payments are effected by debit advice forms only, made out in these terms :—

“Pay the Bank of England, on account of H.M. Postmaster-General, on production of schedule, £ ,”

the schedule being forwarded for examination and payment to the London agents of the Bank by the Receiver and Accountant-General, and which document is a schedule of the accountable receipts which have reached that functionary up to the previous day. For the payment, the

Government
Accounts.

Inland
Revenue.

Post Office.

Government
Accounts.
Post Office.

London agents of the Bank get the usual banker's payment receipt from the Bank of England.

If there be a difference between the amount advised by the Bank to its London agents and the amount appearing in the schedule, the amount of the latter will have to be paid by them, the Receiver and Accountant-General, however, being duly apprised by them of the difference.

Remittances from the Receiver and Accountant-General to the local postmaster are effected through the London agents of the Bank. In obtaining the money, the local postmaster will produce and leave with the Bank an advice in the following terms :—

“THE PROVINCIAL BANK.

“Receiver and Accountant-General’s Office,

“General Post Office,

“London, 18 .

“To the Postmaster of .

“The sum of £ , to enable you to carry on the service of the Post Office, has this day been paid to , as agents for the Provincial Bank, to be placed at your disposal by the Manager of the Provincial Bank in your town, and that amount can be obtained by you on application.

“You will charge yourself with the amount of this remittance in your cash account of the day upon which you receive this advice.

“ , Cashier.”

On the back of this advice the local postmaster's receipt for the amount should be taken, and the document should be used as a debit voucher for the payment.

If there be a difference between the amounts advised by the London agents of the Bank and by the Receiver and Accountant-General, the manager should pay the lesser amount only.

There should be no interest or commission upon the account.

Formerly the PUBLIC STAMPS account was kept in the name of the local distributor, and the withdrawals were by drafts. If these were at 21 ds./d., nine days' interest upon them was allowed ; if at 14 ds./d., three days' interest ; but

if at 10 ds./d., no interest was allowed ; and if issued at this currency a small balance, moreover, was expected to be maintained at the credit of the account, to free it from commission.

Government
Accounts.
Public
Stamps.

These drafts were generally drawn in the name only of the distributor, who stood upon a different footing from the ordinary Government functionaries. He was entrusted with merely a limited supply of stamps, and was required to furnish ample security for his intromissions. The account, indeed, might have been kept in his private name only, or the moneys passed through his business account or deposit account, if he already had one, and thus become subject to the usual terms.

In the temporary absence from duty of the district officers, the manager, before honouring cheques of a substitute, should have the written sanction of the district officer to do so ; or, if the granting of this is beyond that officer's official powers, as to the extent of which the manager should make himself acquainted, the sanction of the authorities in London should be obtained.

There are also the SAVINGS BANKS ACCOUNTS, these, however, being under the control of the local trustees and managers, who appoint the treasurer and other officers, and prescribe the forms in which the moneys should be deposited and withdrawn.

Savings
Banks.

The credit form should, properly speaking, be in these terms :—

				“ Savings Bank, , 18 .
Bank Notes				“ To The Provincial Bank.
Sovereigns .....				.....
Half-Sovereigns				“ Please credit the Treasurer of
Silver				the Savings Bank with the sum
Copper				of
Cheques :—				.....
£.....				as per marginal specification.
.....				“ , Manager.
—				“ , Actuary.
£.....				“ , Managers' Clerk.”

Savings
Banks.

And the cheques should be drawn in favour of the actuary simply, as thus:—

" No. " To , Esq., Treasurer of the Savings Bank, at the Provincial Bank,	Savings Bank, " , 18
..... " Pay the Actuary, , on account of the Savings Bank.	
" Manager. " Actuary. " Managers' Clerk.	
" £...."	

the actuary himself presenting and duly indorsing the cheque.

Where there is no managers' clerk, as is generally the case in the Savings Banks of the smaller country towns, the cheques should be signed by a manager and the actuary.

The terms upon which these accounts are kept depend upon individual arrangement. Where a reasonable balance to the credit can be maintained the account may be conducted without interest or commission, but where the business done is large, and the balance very fluctuating, and often reduced to a small amount, a charge of commission may with propriety be made upon at least the London sums, or the receipts from and payments to the National Debt Commissioners.

In the absence of the actuary or the managers' clerk, a due notification of the appointment of his substitute should be made by the committee, to the bank.

INFANTS OR MINORS.

Infants.

When in name of an infant or a minor, that is, a person under 21 years of age, the money should remain undisturbed until majority, unless withdrawn on a sufficient guarantee,

or where it is understood that it is lodged to be withdrawn in small amounts for necessaries, though it is very unusual for the money of infants to be deposited in this way in their names alone, in a bank.

In the event of the death of the infant, as by 1 Vic., cap. 26, sec. 7, no person under 21 years of age can make a will of any kind, Letters of Administration will have to be taken out by the next of kin, and payment made, on their production in the usual way, to the party or parties entitled to receive it.

When, however, the money of an infant or a minor requires to be lodged in a bank, it is generally done in the name of a trustee or in that of the solicitor to the estate, on his behalf; and when this is the case the lodgment may be regarded as at the disposal at any time of the trustee or solicitor, and should he die it may be repaid to his executor, upon whom, as representing him, the trust will be considered as having devolved.

When the lodgment is made in the name of a trustee or solicitor the heading of the account should commence with his name, vocation, and address, ending in the former case with "Trustee for A. B.", and in the latter with merely "For A. B."

No advance should, of course, be made at any time to an infant or a minor, the "Infants Relief Act, 1874," 37 and 38 Vic., cap. 62, rendering this the more imperative. By section 2nd of this statute it is enacted that "No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification made after full age, of any promise or contract made during infancy whether there shall or shall not be any new consideration for such promise or ratification after full age."

It is of importance to note that infants or minors cannot be traders. And as by virtue of the Relief Act, 1874, an infant cannot have any trade creditors amongst whom his

Infants.

Lodgments on
behalf of
Infants.Infants' Relief
Act, 1874.

Infants

Trading.

Infants.
Trading.

property ought by law to be divided within the meaning of section 12 of the Debtors Act, 1869, he cannot therefore be convicted under that section of feloniously, within four months before the presentation of a bankruptcy petition against him, taking such property with him out of England. The Queen *v.* Wilson, C. C. R., 22nd Nov., 1879, 28 W. R. 307, in which case the prisoner had traded in Hull as a Baltic merchant. At the time of the adjudication of bankruptcy, and when he contracted the debts which had been proved against his estate, he was a minor, and it was contended on his behalf that by reason of his infancy the proceedings in bankruptcy were void ; that he had not and could not have any creditors within the meaning of the 12th section of the Debtors Act, 1869, amongst whom the property which he took away with him ought by law to be or to have been divided, inasmuch as since the Infants Relief Act, 1874, contracts by infants, except for necessaries, are void ; and that the prisoner was never liable at law or in equity for the debts contracted during his infancy, and could not have creditors in respect of them. The jury, however, convicted the prisoner, and the question reserved for the court was whether, under the circumstances stated, the prisoner ought to have been convicted. The Court (Cockburn, C. J., Huddleston, B. Lindley, Manisty, and Hawkins, J. J.) quashed the conviction.

Though infants or minors cannot bind themselves on mercantile contracts, or by bills or notes drawn on trading transactions, they may sue on such, and by the 8th and 9th Vic., cap. 16, sec. 79, they are permitted to be shareholders in joint-stock companies, and under the Friendly Societies Act, 18 and 19 Vic., cap. 63, sec. 15, they may be members of such societies whose rules do not prohibit their election, and may execute all instruments and give all necessary acquittances as such members.

JOINT NAMES.

When in joint names, all should sign, unless one of the number has authority from the whole to draw, in which case he should sign :—

“ For A. B., C. D., E. F., and Self,
“ G. H.”

The authority should, of course, be a written one, addressed to the Bank, and the particulars of which should be given under the heading of the account.

And further, as to joint names, see post “Married Women” and “Trustees.”

JOINT-STOCK COMPANIES.

See “Corporations and other Public Bodies, Companies, and Associations,” ante pages 2 to 8, and 12 to 17.

MANDATORY.

When the account is operated upon by a mandatory, the heading will of course shew this, with the date of the mandate and its terms, particularly if the mandatory is authorized to draw only to a certain amount or to a certain date, in which case the details should be carried forward at the top of each page. The form of the mandate will necessarily vary with the circumstances of each case, but the following are submitted as examples proper to adopt :—

No. I.

“ To The Provincial Bank.

“ Gentlemen,—I hereby authorize A. B., whose signature is subjoined, to operate on my account from 1st February to 31st July next, both days inclusive, and you will please honour all cheques drawn by him on my behalf during that time, but such cheques not to exceed the sum of £50 each, or in the whole one thousand pounds.

“ I am, etc.,

“ p.p. C. D.

“ C. D.

“ A. B.”

Mandatory.
In favour of
Wife.

No. 2.

"I hereby authorize my wife, A. B., whose signature is subjoined, to operate on my account, and whose cheques on my behalf you will please honour until this mandate is specially recalled by letter under my hand. This authority also extends to her drawing, accepting, and indorsing bills, and indorsing all cheques and other instruments on my behalf.

"I am, etc.,
"p.p. C. D.
"A. B. D."

Joint.

"We hereby request that you will open a deposit account in our joint names, and it is understood that, until further notice, either of us may sign for both on the account, and that cheques or receipts signed by either or both of us shall be your discharge.

"We are, etc.,
"A. B.
"C. D."

By District
Officer.

"Please honour until further notice the cheques of A. B. on my behalf, drawn for drafts in favour of the Receiver-General. His signature is annexed.

"And I am, etc.,
"p.p. C. D.
A. B."

In the preceding instances the authority would only cover operations within the sum to the credit of the account, unless, indeed, it could be shown that the mandant or mandator actually received the amount overdrawn. To properly meet the case, therefore, of overdrafts, forms such as the following may be used:—

For Over-
drafts.

"Please honour all cheques on my account drawn for me by my son, A. B., whose signature is subjoined. It is understood that this authority is to remain in force until specially recalled by letter, under my hand, and that it covers any sum, or all such sums, as he may overdraw on the account.

"I am, etc.,
"p.p. C. D.
"A. B. D."

No. 6.

Mandatory.

For Over-drafts.

"I hereby authorize my son, A. B., to sign for me, under procuration, cheques on my business account with you, and his signature in this respect shall be binding on me, whether the said account is to the debit or credit. He is also hereby authorized to indorse cheques and other instruments, and to draw, accept, and endorse bills, and otherwise generally to sign for me in my business. His signature is subjoined, and this mandate is to remain in force until specially recalled by letter, under my hand.

"I am, etc.,

"p.p. C. D.

"C. D.

"A. B. D."

No. 7.

"I hereby authorize A. B., whose signature is subjoined, to operate on the advance account which you have agreed to open in my name, and all cheques upon the same, signed by him on my behalf, shall be as binding upon me as if signed by myself.

"I am, etc.,

"p.p. C. D.

"C. D.

"A. B."

Or the following general form may be used :—

No. 8.

"To The Provincial Bank.

"Gentlemen,—I hereby authorize C. D. to operate on my account with you, and you will please to honour, until this authority is specially recalled by letter, under my hand, all cheques drawn by him for me, and it is understood that this authority shall extend to and cover any sum, or all such sums, as he may overdraw on the account.

"He will sign as annexed.

"I am, Gentlemen,

"Your most obedient Servant,

"Per pro A. B.

"A. B.

"C. D."

And in some instances the use of the following comprehensive form may be necessary :—

Mandatory.

For Over-drafts, and Deposit of Securities.

No. 9.

"I hereby authorize A. B., of _____, to operate on my account with you, and you will please to honour and charge to the account all cheques drawn by him for me, whether the account be to the credit or debit.

"I hereby also empower him to indorse cheques, and to make, accept, draw, and indorse bills of exchange or promissory notes, and negotiate other instruments, and also to deposit with you securities against all advances or overdrafts that may be made on the account, and generally to transact, on my behalf, all business connected with the account, and to conduct it as fully and freely in every respect as I could do myself.

"This authority to subsist until specially recalled by letter, under my hand.

"Annexed is specimen of A. B.'s signature.

"Per pro C. D.

"I am, etc.,

"C. D.

"A. B."

In the event of the account-holder, or client, being incapacitated by infirmity from properly attending to business, and where it is desired formally, especially in the case of ladies, to give full and continued power to another to act upon a credit account, a Power of Attorney, such as the following, on a ten shillings stamp, may be used :—

No 10.

"To The Provincial Bank.

"Gentlemen,—I hereby ordain, constitute, and appoint A. B., of _____, my true and lawful attorney for me, in my name and on my behalf, from time to time, and at any time hereafter, to draw and sign cheques upon my account, and to withdraw all or any part of the money which now is, or hereafter may be, deposited in my name or placed to my credit with you, and also for me, and in my name, and on my behalf, to indorse all cheques on any Bank made payable to my order, and to sign or indorse all interest or dividend warrants, or any other instruments requiring my signature or indorsement, and to do all other acts in relation to my account as he may consider necessary, and to give and sign good and sufficient receipts and discharges for the same, and I agree to

Letter of Attorney.

ratify, allow, and confirm all and whatsoever the said A.B. Mandatory, shall lawfully do in and concerning the premises by virtue of Letter of this authority. In witness whereof I have hereunto subscribed Attorney. my name this day of , .

“D. E.

“Signed, sealed, and delivered
by the above-named D. E.,
after being carefully read over
to her, in the presence of

“F. G., Witness.

“H. J., Witness.”

If thought needful, the Power may commence by mentioning the nature of the illness, as thus :—“In consequence of my failing sight and other infirmities rendering me unable to properly attend to business, I hereby,” etc.

On the subject of mandates, it may be proper to note that, as a rule, they terminate by the death of the mandant, or mandator, or by that of the mandatory, and also in general by the bankruptcy or by the insanity of either, and, in the case of a female principal, by her marriage. Of the termination of an authority, the general principle appears to be that the mandatory, being a person appointed to act for the mandant, from the moment that the latter could not act according to law, the mandatory who represents him cannot act for him.

In Equity, however, a Power of Attorney coupled with an interest is not revocable by the death of the grantor, though at Law it has been held that it is instantly revoked on such death. A mandatory cannot delegate his powers to another, and in certain cases mandates may be recalled by implication, as on the return from abroad of the mandator who had given a mandate to continue during his absence only ; or, in the case of a mandate given for acting during indisposition, the recovery of the mandator would be considered as a recall of the mandate in a question with a party aware of the recovery. The act, too, of a mandant or mandator himself drawing cheques after giving a mandate to another to operate on his account,

Mandatory.
Termination
of Mandates.

would be considered as a revocation of that mandate, unless expressed, as in the above instances, to subsist until specially recalled by letter under his hand.

MARKSMAN.

Marksman.

In cases of signature by mark, it is desirable that the mark should be witnessed by a third party, or one unconnected with the Bank, instead of, or as well as by, an officer of the Bank. When it is inconvenient, however, to obtain the attestation of a third party, the mark should always be witnessed by at least two officers of the Bank.

If the account is to be an active one, and it is the client's intention to transact his business himself pretty regularly at the bank, the witnessing may be confined to one of the officers, the manager, however, in the first instance, procuring a mandate to the following effect:—

“To The Provincial Bank.

“Gentlemen,—Having opened a current account with you, and being unable to sign my name, I hereby authorize you to honour all cheques bearing my mark thus X, with the signature, hereto subjoined, of A. B., as witness, or with the signature of one of your officers, as witness.

“I am, etc.,

“A. B., Witness.”

“C X D.
his
mark.

Or a mandate to the following effect may be procured, should the account-holder or client wish certain others to sign for him:—

“I hereby authorize A. B. and C. D., whose signatures are subjoined, to operate on my account with you, and you will please honour all cheques drawn by them, or either of them, for me, until this mandate is specially recalled by letter, under my hand. Each of the before-named persons is also hereby authorized to draw, accept, and indorse bills, and to indorse all cheques, warrants, or any other instruments, on my behalf.

“I am, etc.,

“G. H., Witness.

“E X F.
his
mark.

“p.p. E. F. “p.p. E. F.

“A. B. “C. D.”

It was not until after considerable doubt that the Courts held that the drawing and indorsing of negotiable instruments may be done by mark, and that such mark may be proved by a person who has seen the marksman so execute instruments. Marksman.

MARRIED WOMEN.

It frequently occurs that married women apply to have accounts opened in their own names. When such applications are made, the manager should, of course, make the applicant aware that withdrawals can only be effected by the husband, and if he finds her averse to having the money put in the name of her husband, he should advise her to have it lodged in the joint names of herself and husband. In most instances he will find that this recommendation will be followed ; but where it is not, he should, in opening the account, add the husband's name and designation, thus—"Mrs. A. B., wife of C. B.—of—," and only pay on the cheques of both, though strictly speaking the husband may demand payment on his own signature.

Under certain circumstances, however, married women can conduct accounts in their own names independently of their husbands altogether, as where the money is their separate property acquired by a pre-nuptial contract, or by gift, either from the husband, or from any other person.

And under the Act of 33rd and 34th Vic., cap. 93, being an act to amend the law relating to the property of married women, passed 9th of August, 1870, and known as the "Married Women's Property Act, 1870," it is enacted by section 1 that—

"The wages and earnings of any married women, acquired or gained by her after the passing of this Act, in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and

Married Women.
Separate Property.

all investments of such wages, earnings, money, or property shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property."

And by section 7 it is declared that—

"Where any women married after the passing of this Act shall, during her marriage, become entitled to any personal property as next of kin, or one of the next of kin of an intestate, or to any sum of money not exceeding £200 under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge of the same."

Under this section it has been held by the case of *King v. Voss*, Chan. Div., 24th January, 1880, that the limit of £200 applies only to money coming under a deed or will, and not to any personalty descending through an intestacy, Jessel, M. R., thinking that there was no limit in the case of an intestacy, although he did not see why there should be a difference. The fund in question, £600 consols, was ordered to be transferred to the married woman, next of kin to the intestate, on her separate receipt.*

* In order that the terms of the above important Act may be kept in view, the following synopsis of it is furnished.

Section 1 relates to the earnings of married women as given above.

By section 2, Deposits in Savings Banks and Post Office Savings Banks, hereafter made in the name of a married woman, or in the name of a woman who may marry after such deposit, shall be deemed to be her separate property, and shall be accounted for and paid to her as if she were an unmarried woman.

By section 3, any married woman, or any woman about to be married, may apply to the Bank of England or Bank of Ireland, that any sum forming part of the public stocks and funds, and not being less than £20, to which she is entitled, or which she is about to acquire, may be transferred to her name, or intended name, as a married woman, entitled to her separate use, and being so transferred the same is to be deemed her separate property.

[By 37 and 38 Vic., cap. 3, s. 18, these provisions are extended to India Stock.]

And so by section 4, with regard to any fully paid up shares, or any debentures, or any stock, to the holding of which no liability is attached in any incorporated or joint-stock company, and to which she is entitled, may be registered in her name and deemed as her separate property.

As also by section 5, in respect of any share, benefit, or debentures to which no liability is attached in any Industrial and Provident Society, or any Friendly Society, Benefit Building Society, or Loan Society duly registered, certified, or enrolled under the Acts relating to such societies respectively; provided in

And by previous statutes securing, after the necessary steps before a magistrate or the Court of Divorce, protection to a married woman when deserted by her husband, her property acquired since the commencement of the desertion belongs to her, as if she were a feme sole, or unmarried.

Married Women.
Separate Property.

So also after a judicial separation, or separation effected through the Divorce Court.

And of course, also, after a divorce by which the marriage tie is entirely dissolved ; and in which case she is, moreover, solely entitled to such of her property as her husband did not reduce into his possession during coverture.

these and all of the preceding instances, that if the deposits, or investments, etc., are effected by means of moneys of her husband, without his consent, the Court may upon application, under section 9 of the Act, order such to be transferred or paid to him.

By section 6 all deposits or investments made in fraud of creditors of the husband are invalid and may be followed as if the Act had not passed.

Section 7 relates to personal property falling to her, as given above in the text.

By section 8 the rents and profits of any freehold property coming to a woman married after the passing of the Act shall belong to her for her separate use, and her receipts alone shall be a good discharge for the same.

Section 9 provides for settlement of questions between husband and wife as to ownership of property.

Section 10 relates to the effecting of policies of life insurance for the separate use of the wife.

Section 11 is as follows :—

“A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act, declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall by writing under his hand have agreed with her, shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies both civil and criminal against all persons whomsoever, for the protection and security of such wages, earnings, money, and property, and of any chattels or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, money, chattels, and property, belonged to her as an unmarried woman ; and in any indictment or other proceeding, it shall be sufficient to allege such wages, earnings, money, chattels, and property, to be her property.”

Section 12 enacts the liability of the wife, and not the husband, for her debts contracted before marriage.

[But it is to be noted that by the Amendment Act of 30 July, 1874, 37 and 38 Vic., cap. 50, the husband is, to the extent therein provided, rendered also liable.]

Section 13 renders her liable to the parish for the maintenance of her husband, when she has separate property.

And by section 14 she is liable to the parish for the maintenance of her children.

Married
Women.
Separate
Property.

Authorities
by Husband.

And it has been held that a woman whose husband is civiliter mortuus, that is, civilly dead, or dead in law, as while he is under sentence of transportation, may contract as a single woman, because to prevent her from doing so would be to deprive her, likewise, of all civil rights, since the husband, being dead in law, is no longer capable of contracting for her.

But so long as husband and wife are living together, it is as well to avoid all questions of separate property, and to get from the husband, whether the funds be his own or his wife's, a general authority such as this:—

“To The Provincial Bank.

“Gentlemen,—I hereby authorize my wife, Mrs. A. B., whose signature is subjoined, to bank with you, and you will accordingly please to honour her cheques, and allow her to otherwise freely operate upon her account.

“I am, etc.,

“C. B.”

Or, if required by circumstances, the latter part of the authority may be, “and allow her to operate freely upon her account, whether overdrawn or not, and I hereby duly confirm all past transactions.—I am,” etc.

When the husband has an account and wishes his wife's to be replenished from it at stated periods, an authority as follows may be taken from him:—

“I shall feel obliged by your opening an account, with the accompanying sum of £_____, in name of Mrs. A. B., my wife, whose signature is annexed, and you will please honour her cheques upon you, and charge them to that account. Please also transfer to her credit, on 1st proximo, and quarterly thereafter, £_____, from my account until further notice.

“I am, etc.,

“Mrs. B's signature,

“C. B.

“A. B.”

Joint Names.

From frequent or long-continued absences occasioned by the nature of his employment, or from other reasons, a husband may wish to have an account opened in the joint names of himself and his wife, to be operated upon by

either. This may be done by a short note or written authority, such as this:—

Married
Women.

“We hereby authorize you to honour the cheques of Joint Names.
either of us drawn upon our joint account with you.

“We are,” etc.

And the headings of the pass-book and ledger will bear that the account is with “Mrs. A. B. and Mr. C. B.,
of . Either to draw, per authority dated .”

Or if the account is wished to be in the joint names, and that either or survivor should draw, as is sometimes the case with husband and wife, or with two members of the same family, or under special circumstances with others, then the authority will, of course, be to honour the cheques “of either of us or survivor,” etc., the headings bearing “either or survivor to draw, per authority dated .”

On the point of joint deposits effected by a husband in his name and that of his wife, may be mentioned the case of Williams *v.* Davies, Court of Probate, 29th April and 31st May, 1864, where a husband having lodged £100 in a Bank in the joint names of himself and his wife, *as a provision for her*, and having died, the amount was paid by the Bank to the widow on her demand, it was held that the money formed no part of the deceased's estate, and that she was entitled to withdraw it as her own by survivorship.

If an account be in the name of a spinster and she gets married, and it is desired that either she or her husband or survivor may draw, an authority such as the following should be obtained:—

“Please transfer the balance of the account in the name of Miss A. B., now the undersigned A. C., wife of the undersigned D. C., to an account to be opened in our joint names, and honour the cheques of either or survivor of us upon the said account.

“We are, etc.,

“A. C., formerly A.B.

“D. C.”

Although the husband and wife live separate, she cannot, Liabilities of
so long as the relationship of marriage subsists between Wife.

Married
Women.

Liabilities of
Wife.

them, and they are both living in the kingdom, be sued personally as a debtor, though she has, by the Married Women's Property Act of 1870, the power of suing. Neither in a Court of Equity nor in a Court of Law can she be sued for a debt, but Equity always gave remedy against property settled to her separate use, and now all the Divisions of the High Court would compel the satisfaction of an engagement out of her separate property. As recovery is only against the separate property and not against herself personally, it follows that a married woman cannot be made a bankrupt, except when she carries on trade within the city of London, by the custom of London.

And it has been held by the case of *Pike v. Fitz-Gibbon*, before Vice-Chancellor Malins, 5th May, 1880, that not only does a general engagement on the part of a married woman bind the separate property or estate she has at the time of the contract, but that it also binds after-acquired separate property and also separate property which at the time of the contract she was restrained from anticipating, if the restraint has since, by the death of her husband, become inoperative. "It had been argued," said the Vice-Chancellor, "that she was only liable to pay out of the estate which she had at the time of the transaction. That contention is, in my opinion, unsustainable, and there was no authority cited to show that a married woman could only be liable for the property she had at the date of the contract. Then it was argued that she was not liable in respect of such portion of her estate as was given to her with a restraint on alienation; but Mr. Fitz-Gibbon had died since these transactions took place, and the restraint on anticipation lapsed on his death, and she was as much liable now as if there had been no restraint on alienation. In the case of *Pickard v. Hine*, 5 L. R., Ch. 274, it was decided that where a married woman contracts a debt which she can only satisfy out of her separate estate, her

separate estate would be made liable for the debt, and the decree was that all the property vested in the married woman at that present date when the decree was made was liable. So here Lady Fitz-Gibbon was liable in respect not only of the separate property which she had at the time of the transaction, but all the property which she now had, just the same as a man would be liable for a debt in respect of all the property he might have at the time of the decree against him. In the case of a man debtor you could take all his property, and the same rule applied to a woman debtor. Where a woman intended to make herself liable for debts, and where credit was given to her upon the faith of her separate property, that created a liability not only upon the separate estate she then had, but upon all the property she might subsequently acquire. A married woman could not be touched personally, but you could touch her property. The decree would, therefore, be in favour of the plaintiffs, and an inquiry must be directed as to what property the lady was now entitled to."

And in the case of *Davis v. Artingstall*, before Fry, J.,^{Rights of Wife.} on 1st May, 1880, cited as follows in 24 Sol. J., 523, the action was brought by a married woman who had carried on a business separately from her husband, against the husband and some auctioneers who had by his direction put up for sale the stock-in-trade of the business, and had sold a considerable portion. The part which was not sold was given up to the husband. The plaintiff claimed to recover from the auctioneers the value of the whole of the property which they had put up for sale, both that which was actually sold and that which was in the husband's possession. After the property had been advertized for sale, and before the sale took place, the plaintiff gave notice to the auctioneers that she claimed it as her separate property. Fry, J., held, on the authority of *Ashworth v. Outram*, 25, W. R. 896, L. R. 5 Ch., D. 923, that though section 1 of the Act in terms only protects the wages and

Married Women.
Liabilities of Wife.

earnings of a married woman "acquired or gained by her in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband," yet the protection extends to the stock-in-trade and property employed by her in the separate business. The Act, as his lordship said, in terms protects only the fruit ; the effect of the decision in *Ashworth v. Outram* is to protect also the tree which bears the fruit. And he held, upon the authority of *Williams v. Millington*, 1 H., Bla. 81, that the auctioneers had a possession coupled with an interest or a special property in the goods which were entrusted to them for sale, and that consequently they were liable for the fair value both of the goods which were sold and of those which the husband had taken away, and his lordship directed an inquiry as to the fair value of all the goods. He gave the plaintiff her costs of the action up to and including the trial, but reserved the costs of the inquiry, on the ground that when damages have to be assessed it would generally be much better that the case should be tried by a jury, who could at once determine the amount of the damages, instead of having first a trial before a judge and then a second trial in chambers, with possibly a reference to the judge again.

PRIVATE OR ORDINARY PARTNERSHIPS.

On opening an account with private or ordinary partnerships, both the names and the signatures of all the partners should be obtained, as, in the absence of notice to the contrary, each partner has the power of signing for the partnership firm, and, in receiving the signatures, the manager, for his better guidance, should, with the specimens, get each partner to adhibit his individual signature, thus :—

A.B. & Co. — C.A.

A.B. & Co. — D.B.

A.B. & Co. — E.F.

In the generality of instances, the signature consists merely of the name of the firm, though sometimes the partner signing attaches his own name also, thus :—

Private
Partnerships.
Powers.

For A.B. & Co.,

C.A.

Or,

A.B. & Co.,

Per C.A., partner.

A partnership firm would also be bound by the signatures of all or any number of the partners, or by a partner, signing—

For self and co-partners,

C.A.,

or by the simple signature of one of the partners—a practice now of very rare occurrence, and very properly discountenanced by bankers.

It is of importance to note that, if the partner signing should vary the style of the firm, they would not be liable, unless there is assent on the part of the other partners.

Upon a bill, however, drawn on a firm, and accepted by a partner in his own name only, the firm would be liable, if they were in partnership at the time of the acceptance. And where separate concerns are carried on under the name of the same firm, all the partners in each of the concerns will be liable to a bona fide holder of instruments bearing the name of the firm.

And it is likewise of importance to note that in the transfer of an account from one bank to another by one partner only, it is doubtful whether he can, without the assent of the other partners, borrow from the latter bank to pay off the former bank. And where a partner opens an account in his own name, and the Bank can prove that he was acting as agent of the partnership, the account will be regarded as that of the partnership, though, on the other hand, the mere circumstance of the amount lodged being partnership money is not sufficient to prove the account to be a partnership account.

Transfer of
Account.

Private
Partnerships.

Dormant or
Secret
Partners.

Nominal or
Ostensible.

Retired.

New.

Partnership
Law
Amendment
Act, 1865.

Besides the actual and active partners in a partnership firm, there may be dormant or secret, and nominal or ostensible partners :

Dormant or secret being those whose names are not known, or do not appear as partners, but who, from participating in the profits, are liable to creditors equally with the other partners ; and the

Nominal or ostensible being those who, without having an interest in the firm, yet lend their names to it, or represent themselves as partners, and thus render themselves liable to those to whom they have been so held out.

Retired partners are bound by the transactions of the firm arising before the retirement, and are liable to all such persons dealing with the firm as have not had notice of the retirement.

New partners are only liable for obligations contracted after they have joined the firm.

Formerly unlimited liability for the losses of a partnership followed the smallest right to participate in the profits, but the law in this respect has been considerably modified by the following Act, known as the Partnership Law Amendment Act, of 28 and 29 Vic., cap. 86, passed 5th July, 1865, and the enacting clauses of which are furnished in extenso :—

“**I. LENDER NOT A PARTNER BY ADVANCING MONEY FOR SHARE OF PROFITS.**—The advance of money by way of loan to a person engaged, or about to engage, in any trade or undertaking, upon a contract, in writing, with such person, that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or the persons carrying on such trade or undertaking, or render him responsible as such.

“**2. REMUNERATION OF AGENTS, ETC., BY PROFITS, NOT TO MAKE THEM PARTNERS.**—No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such

trade or undertaking, shall of itself render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Private
Partnerships.
Partnership
Law
Amendment
Act, 1865.

"3. CERTAIN ANNUITANTS NOT TO BE DEEMED PARTNERS.—

No person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of, or to be subject to, any liabilities incurred by such trader.

"4. RECEIPT OF PROFITS IN CONSIDERATION OF SALE OF GOODWILL NOT TO MAKE SELLER A PARTNER.—

No person receiving, by way of annuity or otherwise, a portion of the profits of any business in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of, or be subject to, the liabilities of the person carrying on such business.

"5. IN CASE OF BANKRUPTCY, ETC., LENDER NOT TO RANK WITH OTHER CREDITORS.—

In the event of any such trader as aforesaid being adjudged a bankrupt, or taking the benefit of any Act for the relief of insolvent debtors, or entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of any such loan as aforesaid shall not be entitled to recover any portion of his principal, or of the profits or interest payable in respect of such loan, nor shall any such vendor of a goodwill as aforesaid be entitled to recover any such profits as aforesaid, until the claims of the other creditors of the said trader, for valuable consideration in money or money's worth, have been satisfied.

"6. INTERPRETATION OF 'PERSON'.—

In the construction of this Act, the word 'person' shall include a partnership firm, a joint-stock company, and a corporation."

This Act, it may be added, relates to Great Britain and Ireland.

In private or ordinary partnerships the presumption is that the death of a partner terminates his interest and liability in the partnership, whereas in joint-stock companies the presumption is that the estate of a deceased shareholder continues liable to the debts and engagements of the

Effect of
Death of
Partner.

Private
Partnerships.

Effect of
Death of
Partner.

Distinction
between
Private
Partnerships
and Joint-
stock
Companies.

company so long as the shares remain in his name, even though those debts and engagements be incurred after his death; and with the view of bringing out clearly the distinction which exists between a partner in private or ordinary partnerships, and a member of or shareholder in joint-stock companies, the judgment on the point is, in the subjoined foot-note, given of Vice-Chancellor James, who, in Baird's case *re The Agriculturist Cattle Insurance Company*, before the Court of Chancery, 7th, 8th, and 26th July, 1870, reversed the judgment of the Master of the Rolls, who had held that the estate of a deceased shareholder was liable only in respect of such debts and liabilities as subsisted at the time of his death.*

* "Ordinary partnerships," said the learned judge, in the course of his judgment, "are essentially in kind, and not merely in the magnitude of the partnership or the number of the partners, different from joint-stock companies. Ordinary partnerships are by the law assumed and presumed to be based on the mutual trust and confidence of each partner in the skill, knowledge, and integrity of every other partner. As between the partners and the outside world (whatever may be their private arrangements between themselves), each partner is the unlimited agent of every other in every matter connected with the partnership business, or what he represents as partnership business, and not being in its nature beyond the scope of the partnership. A partner who may not have a farthing of capital left may take moneys or assets of the partnership to the value of millions, may bind the partnership by contracts to any amount, may give the partnership acceptances for any amount, and may even, as has been shown in many painful instances in this Court, involve his innocent partners in unlimited amounts for frauds which he has craftily concealed from them. That being the relation between partners, of course, when the Court had to consider whether a partner could substitute or let in some other person for or with him, or whether a partner's executor could claim to succeed him, there could be no difficulty in saying that this could not be done without the consent of all the partners. The death of a partner, therefore, necessarily put an end to the partnership so far as he was concerned, and as, in the absence of express stipulation, the right of the representative was to have all the assets realised and divided, it necessarily put an end to the whole subject-matter of the partnership, as, indeed, independently of that right, a contract between A.B.C. and D. to be partners is essentially a different thing from a contract that they, or the survivors of them, should be partners. Therefore, when the simple case was presented to the Court of an agreement between A.B. and C. to be partners for a long term of years and nothing more, it was, of course, held that, in the absence of an express stipulation, the mere length of the term afforded no sufficient presumption to prevent the application of the ordinary law, and therefore it was held that the death of one was the dissolution of the society as to all. But it was because these were the ordinary law and consequences of an ordinary partnership, it was to escape from these that joint-stock companies were invented. That was the very cause and reason of their existence. At first they existed under the favour of the Crown, which gave them charters of incorporation, and nobody ever supposed that the holders of stock in the Bank of England or the East India Company had anything to do with the law of partnership, or were

Where from the agreement between partners—and partnership agreements are throughout of endless variety—it is provided that one only of their number shall sign, the manager should receive a letter from the partners announcing the circumstance, and requesting him only to honour the signature of the firm by that partner. Where the partners are numerous, and the executors of deceased partners preserve an interest in the business, it is not unusual for them to appoint two or three of their number to sign, as well as, in a limited degree, one of their clerks, and under such circumstances a communication such as the following should be handed to the bank :—

Private
Partnerships.
Limited
Signing.

Authority.

partners. But there were large societies on which the sun of royal or legislative favour did not shine, and as to whom the whole desire of the associates, and the whole aim of the ablest legal assistants they could obtain, was to make them as nearly corporations as possible, with continuous existence, with transmissible and transferable stock, but without any individual right in any associate to bind the other associates, or to deal with the assets of the association.

“A joint-stock company is not an agreement between a great many persons that they will be co-partners, but is an agreement between the owners of shares, or the owners of stock, that they or their duly recognised assigns, the owners of the shares for the time being, whoever they may be, shall be and continue an association together, sharing profits and bearing losses. No shareholder in a joint-stock company is, in the legal sense of the word, any more a partner than the owner of bank stock is. He may not have the same limit of liability, but in every other respect he is the same : he has the same right to take part in public meetings of the body, he has the same right to elect or remove directors, he has the same right to vote for or against the resolutions of the body, he has the same right to such dividends as may be declared, and he has the same right to dispose of his shares as a separate and distinct piece of property, and no other rights in or over the association, its assets, or its transactions ; and if he is liable under any contracts or obligations, or in respect of any acts of the body, it is not because they are the contracts, obligations, or acts of his partners or partner, but because they are the contracts, obligations, and acts of the quasi body corporate, under present legislation the actual body corporate, by its properly-constituted agents. It may be, and generally is, no doubt, that the agents, the directors, are shareholders, and in that sense partners ; but it is certain that there may be a board of directors perfectly competent to bind the whole body, although every one of them may have disqualified himself by parting with every share. Starting, then, with this view of the relation which exists between the associates in a joint-stock adventure, the presumption is that the death of a shareholder makes not the slightest difference either in right or liability, that the executor of a deceased shareholder who succeeds in point of property to the share takes it (of course in his executorial character) on exactly the same terms and conditions as every other owner of a share—equal benefit, equal liability—and the deed has therefore to be scrutinised, not to see whether it gives or creates such equal benefit and liability, but whether it takes away the one or releases the other.”

Private
Partnerships.
Authority.

To The Provincial Bank.

A. B. & Co.

Gentlemen,—At a meeting of the whole of the partners, all undersigning, held this day, it was resolved that on and after the 1st proximo, and until further notice, all cheques of the firm shall be signed on its behalf by two of the undersigned, A.B. and O.P., and that all bills shall be drawn and accepted by them on its behalf ; and that all bills, cheques, or other instruments be indorsed by either of them, or by Q.R., on its behalf, the last of whom will sign as annexed. Your attention to this intimation will oblige,

Your most obedient servants,

A.B. } Executors of the
C.D. } late E.A.

F.G., for self and co-
executors of the late
H.B.

I.J.

K.L.

M.N.

O.P.

Per pro A.B. & Co.,

Q.R.

On an alteration in the title of the partnership, written intimation should be given to the Bank, as follows :—

No. I.

Change in
Title of
Partnership.

Notifications
to Bank.

I beg to state that I assume, from this day forward, my son, C.B., as a partner, and that the name of the firm will in future be A.B. & Son. Your duly noting this, as well as our respective signatures subjoined, will oblige.

Yours, etc.,

A.B.

A.B. will sign — A.B. & Son.

C.B. will sign — A.B. & Son.

Or,

No. 2.

Please transfer the account of the undersigned A.B. to the name of the new firm of A.B. & Co., debiting to the latter any bills now under discount with you that may be returned on account of the former, as well as debiting it with any cheques of his, under to-day's date, or any previous date, not yet presented for payment.

Private
Partnerships.
Change in
Title of
Partnership.
Notifications
to Bank.

We are, etc.,

A.B.

A.B. & Co. — A.B., partner.

A.B. & Co. — C.D., partner.

A.B. & Co. — E.F., partner.

Or,

No. 3.

Having changed the title of our firm from A. B. & Sons to that of The Company, we hereby request you to transfer the sum appearing at the debit of our account to an account to be opened in the name of the new company, and to which account we beg you will debit all cheques which may have been issued by us previous to this date, as well as to debit it with the acceptances advised by us as falling due during the present month.

We are, etc.,

A.B. & Sons.

A.B. will sign — p.p. The Co.,

A.B. partner.

C.B. will sign — p.p. The Co.,

C.B. partner.

D.B. will sign — p.p. The Co.,

D.B. partner.

Or,

No. 4.

Our account in the name of A. & Co. with you having been transferred to the name of our new firm A. & B., we

Private
Partnerships.

request you to take note, that all our cheques, bills, and other instruments will in future, from to-day's date, be signed and endorsed A. & B. as under, by our Mr. E.B.

We are, etc.,

A. & B.

C.A. partner.

D.A. partner.

E.B. partner

Notification
of Change to
Bank.

On any change in the members of a partnership, the manager should report fully upon the circumstances in connection with such change, and in the case of the member or members leaving, state what amount of capital is being paid out, and how the position of the firm is likely to be affected. If any new member is being assumed, full information respecting him and his means should be given.

Effect of
Continuation
of Partnership,
without new
Agreement.

It may be noted that if a partnership be continued beyond the term fixed by the partnership articles, those articles continue to govern the partnership so far as they are applicable to the altered circumstances. *Cox v. Willoughby*, Chan. Div., 7th February, 1880, where it was provided by partnership articles which prescribed a certain term for the partnership, that on the death of one of the partners before the expiration of the term, a certain sum should be paid to his executors by way of purchase money for his interest in the business, and the partner in question survived the partnership term and then died, the partnership business having continued to be carried on up to that time, it was held that though the term had expired, the purchase money was still payable by the surviving partner. *Essex v. Essex*, 20 Beav. 442, 4 W. R., Ch. Dig., 61, followed. *Cookson v. Cookson*, 8 Sim. 529, not followed.*

* Sir A. Hart, when Lord Chancellor of Ireland, said, in *Booth v. Parks*, I Moll. 446 :—“We know that after the expiration of the term at first agreed upon, partnerships frequently continue without a new agreement, and the effect of that is that the partners after the expiration of the partnership term, continuing to carry on the trade without a new deed, all the old covenants are infused into the new series of transactions, with the single exception of the covenant for duration, for either may instanter dissolve the prolonged

PLURALITY OF ACCOUNTS.

Plurality of
Accounts.

Where several distinct accounts are conducted by one account-holder, it is necessary to be particular in getting him to state upon the cheque, or the credit voucher, the special account to be debited or credited, and any omissions to be supplied, or alterations to be effected, should be done by himself and not by an official of the Bank.

Where there are contra accounts, or one creditor and the other debtor in the name of an account-holder, and it is arranged that the one account shall be a set-off against the other, compensating interest to the appropriate extent will necessarily be reckoned.

As will hereafter be seen, the various accounts, excepting trust accounts of an account-holder, may be combined by the Bank, unless there be a special arrangement to the contrary.

TRUSTEES.

In accounts opened with two or more trustees, the manager before paying will, of course, obtain the signatures of all, unless he has written authority from them to honour the cheques of one or a certain portion of their number only, as it is well established that in dealing with trustees or any other body of persons not in partnership, a Bank is not discharged in making payments unless it has the assent of the whole, there being thus an important distinction between their case and that of executors, who, as has been already seen, can act individually however great their number.

Trustees.

partnership, but all the other original stipulations are continued." Fry, J., commenting upon this in *Cox v. Willoughby*, *supra*, says, "In my view this is not so accurate a statement of the rule as the one which is given by Mr. Justice Lindley, for I think that the exception applies not only to the covenant for duration, but to all provisions inconsistent with the new partnership at will." The rule given by Lindley is, "If a partnership originally entered into for a definite time is continued after the expiration of that time without any new agreement, the articles under which the partnership was first carried on continue, so far as they are applicable to a partnership at will, to regulate the rights and obligations of the partners inter se." 2 *Lindley on Partnership*, 4 ed., 823.

Trustees.

When one is authorized to operate on the account, he should sign thus :—

“For self and co-Trustees of A. B.

“C. D.”

It may sometimes be desired that the person for whom the trustees act, the beneficiary, or, as he is termed in law, the “*Cestui que trust*,” should himself claim the interest half-yearly, in which case there should be a standing written order from the trustees to enable him to draw.

Absence, &c.
of a Trustee.

Where, as in the event of the absconding of a trustee, the signatures of all cannot be obtained, then Equity will give relief and enable the others to receive the money. In re Harford’s Trusts, Chan. Div., 8th Nov., 1879, where there were four trustees of a will, of whom one had absconded, the Court, on petition, appointed the remaining three to be trustees in place of the four original trustees.

And a payment out of court to three of four trustees was directed where the fourth trustee was absent with his regiment in India.—*Clark v. Fennick*, 42 L. J. 320.

And, as will be observed post, the legislature, by the Amending Trustee Relief Act of 12 and 13 Vic., cap. 74, has made provision for cases where there is want of concurrence on the part of trustees.

Where, however, from the flight or disappearance, or unknown abode of one of their number, the signatures of all the trustees cannot be obtained, and the amount is small, or only a trifling balance remains upon the account, the sum may, upon proper indemnity, be paid by the manager.

Who may be
Trustees.

With the exception of attainted persons, and aliens as regards real property, anyone may be a trustee. It is not often that infants fill the office, nor is it advisable that they should, in consequence, as has been seen, of the legal disabilities under which they labour; nor should married women, on account of their inability to join in the requisite assurances without their husbands’ concurrence.

If a trustee mixes trust money with his own in a bank, he is chargeable with interest ; and where he happens to be a tradesman, and pays in the trust money to his business account, the *Cestui que* trust can charge him either with interest or a proportionate share of the profits of the trade, it being a rule that a trustee must account for all the gain he makes. And if he keep, without any profit accruing to him, trust money which should have been invested, he is chargeable with interest.*

Of trustees guilty of a breach of trust, the *Cestui que* trust may proceed against any one of them for recovery of the entire loss.

Unless prevented by the deed creating their trust, trustees are now at liberty to invest trust moneys in the stock of the Bank of England or of Ireland, or in India stock ; and by 10 and 11 Vic., cap. 96, passed 22nd July, 1847, and entitled "An Act for better securing Trust Funds and for the Relief of Trustees," it is enacted by—

Section 1, that trustees may pay trust moneys, or transfer annuities or stocks, and Government or Parliamentary securities, into the Court of Chancery, and that the receipt of one of the bank cashiers, or the certificate of the proper officer, shall be a sufficient discharge for the money so paid, or the stocks or securities so transferred or deposited ; and

Section 2 enacts that the Court of Chancery may make orders on petition, without bill, for the application of trust moneys and the administration of the trust, and that such orders shall have the same effect as if made in a suit regularly instituted in the court ; and that if it shall appear that any such trust funds cannot be safely distributed without the institution of one or more suit or suits, the Lord Chancellor or Master of the Rolls may direct any such suit or suits to be instituted.

* Where trustees were empowered by a Creditors' Deed to carry on the debtor's business, and to borrow money for that purpose, and they borrowed from some of their own number who were bankers, it was held that the latter were only entitled to simple and not compound interest on their advances.

Trustees.
Amending
Act, 1849.

And the Amending Act of 12 and 13 Vic., cap. 74, passed 28th July, 1849, and entitled "An Act for the further Relief of Trustees," provides that if it shall appear to the judge of the Court of Chancery that any moneys, annuities, stocks, or securities are vested in any persons as trustees, executors, etc., and that the majority of them are desirous of transferring, paying, or delivering the same to the Accountant-General of the High Court of Chancery, but that for any reason the concurrence of the others cannot be had, it shall be lawful for the judge to order such transfer, etc., to be made by the majority without the concurrence of the others. And where any such moneys, or Government or Parliamentary securities, shall be deposited with any banker, broker, or other depositary, it shall be lawful for the judge to make such order for the payment or delivery of them to the majority of the trustees, etc., for the purpose of being paid or delivered to the Accountant-General, as to the judge shall seem meet; and every transfer of any annuities, stocks, or securities, and every payment of money or delivery of securities in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the annuities, stocks, or securities so transferred, or the moneys or securities so paid or delivered respectively, and shall fully protect and indemnify the Bank of England and all others acting under or in pursuance of the order.

OVERDRAFTS.

Overdrafts.

Account-
holders of
Small Means.

As the subject of secured advances will be fully considered in the second volume, it will at present be only necessary to allude to ordinary unsecured overdrafts; but, whether in allowing these or granting secured advances, the account-holder should always be made aware that the Bank reserve the customary right to call in the amount, either in whole or in part, whenever they may deem it desirable to do so.

With account-holders of small means great caution should

be exercised in allowing overdrafts, and, as a rule, such parties should at the outset be apprised that their accounts cannot be permitted to be overdrawn without adequate personal security being lodged. For a merely temporary purpose and to secure immediate profit to the party, a small sum, repayable in a few days, may in very exceptional instances be allowed, but only to an applicant who is steady, industrious, and deserving, and of irreproachable character, and due information of the circumstance should be sent to head office.

No overdraft of any importance should be allowed without ^{Sanction.} the previous sanction of the Bank, and in cases of emergency, and when there is not time for obtaining previous sanction, head office should be at once informed of all the circumstances attending the granting of the accommodation, which, of course, should be only to account-holders of acknowledged position and undoubted responsibility. In the application for an overdraft, the purpose for which it is required, the source from which it will be repaid, and the date by which it will be materially reduced or altogether paid off, should, as a rule, be mentioned.

In the case of the retirement of a partner from a firm ^{Retirement of Partner.} having an overdrawn account, transactions on the account should, in general, be stopped, and operations conducted in a new account, which should, if circumstances necessitate, be kept to credit. Full information at the earliest moment will necessarily be sent to head office.

It frequently occurs that small overdrafts may be temporarily required by ordinary schools, and in such cases a copy resolution such as the following, and certified by the chairman, should be sent by him to the Bank :—

Copy of Resolution passed at a meeting of the Managers
of School, held on day of 18 :—

“ The Managers authorize their Treasurer and any one of the Committee to overdraw the School Account with the Provincial Bank to the extent of £50 for two months, and order that this minute stand as a request to the Bank to honour their cheques accordingly.”

A. B., Chairman.”

Overdrafts.
Account-
holders of
Small Means.

Overdrafts.
Schools.

Highway
Boards.

And temporary overdrafts to Highway Boards and Local Boards may be allowed upon certified copies of minutes, such as the following :—

HIGHWAY BOARD.

At a meeting of the Finance and General Purposes Committee of the District Highway Board, held at on day of 18 :

Present—

Messrs. A. B.
C. D.,
&
E. F.

Mr. B. in the chair.

"The Clerk having reported that the Treasurer was willing to allow the account of the Board with him to be overdrawn to the extent of about £500 from time to time during the next three or four months, the members of the Committee present undertook for themselves and the Board to see that the amounts so overdrawn shall be repaid from the first contribution of rates from the various townships in the district."

(Signed) A. B., Chairman.

The above is a true copy.

G. H., Law Clerk.

LOCAL BOARD.

Local Boards. At a meeting of the Local Board, held at the Board Room, on day of 18 :

Present—

Messrs. A. B., Chairman.
C. D.,
E. F.,
G. H.,
I. J.,
K. L.,
&
M. N.

It was moved by Mr. D., seconded by Mr. F., and unanimously resolved :

"That, in consideration of the Provincial Bank having agreed to allow overdrafts not exceeding £1,500, for the purposes of the Gas, Water, and Improvement Act, 18 , this Board hereby pledge themselves to repay the sums to be overdrawn by them for such purposes, together with interest and commission thereon, out of the first moneys

to be raised by virtue of the powers for that purpose conferred by the Act; and, if so required, to execute a security under Overdrafts. the Act for securing to the Bank the balance for the time Local Boards, being owing to them in respect of such overdrafts, interest and commission, and other charges, according to the usual course of their business, until repayment."

(Signed) A. B., Chairman.

Extracted from the minutes of the Local Board.

O. P., Clerk. A. B., Chairman.

The latter certified copy minute should be accompanied by a letter from the law clerk, in which should be stated the extent to which the Board is empowered to borrow, the ratable value of the district, and the amount of the existing mortgage debts.

There should, of course, be a considerable margin beyond the amount of any overdraft that may be allowed.

With reference to a Railway Company overdrawing, it may be noted that in the case of Beattie and others *v.* Lord Ebury and others, House of Lords, 19th May, 1874, it was observed by Lord Chelmsford that "the directors have the management of the pecuniary and other affairs of the company, and are not restricted from incurring debts for the purpose of the company by overdrawing the account." It was attempted to attach personal liability to the directors, the company not having sufficient assets; but, as was observed, there is no case to be found in the Books where the directors have been made personally responsible for overrawing an account of a company with the Bank, and that the Bank was perfectly well able to protect itself, not being bound to pay a single cheque when the account was overdrawn without taking the personal guarantee of the directors.

And in the cases of Waterlow *v.* Sharp, and Gardner *v.* Sharp, before Sir John Stuart, Vice-Chancellor, 30th June, 6th July, 1869, 8 L. R., 501, where a bank permitted a railway company to draw cheques against a sum entered in the books of the bank under the title "Loan Account," and the claim of the bank, on the insolvency of the

Overdrafts.
Railways.

railway, was disputed as an unauthorized loan, it was held that though the transactions between the bank and the railway company were recorded in the bank books under the title of "Loan Account," yet they were not the less mere overdrawing in the regular course of banking business, and that there was no borrowing or loan, in the proper sense of the word, which could be questioned as ultra vires. The railway had thirty special and separate accounts and one general account with the bank, and the bank had carried to the credit of the general account sums which were entered in the books of the bank to the debit of "Loan Account." Evidence was given on the part of the bank that the meaning of the transaction was merely a permission to overdraw to a limited extent, subject to the payment of interest on the amount so limited. The bank was allowed to prove for the amount due to them, £64,769 19s. 11d.

Overdrafts not
Loans.

And in a previous case, in connection with a mining company, *in re Cefn Cilcen Mining Company*, 3rd December, 1868, Sir John observed that "it has been well decided that the balance due to a bank by a company which keeps an account with it, and has had the benefit of the money, is a debt, but not a loan, in the proper sense."

In fact, the ordinary debtor and creditor relationship existing between banker and client is simply reversed in the case of overdrafts, the banker becoming then the creditor and the client the debtor, with their respective corresponding rights and liabilities preserved.

Overdrawn
Deposit
Account.

It only remains to add here that where the accounts are divided into "deposit" and "current," so soon as one of the former becomes overdrawn a transference of it should at once be made to the current accounts. The accounts classed as deposit are the credit ones attended with few operations, and upon which interest is allowed, but no commission charged; the current are the operative business accounts, whether credit or debit, bearing all the usual

charges, and with this class should be embraced all over-drawn accounts.

The amount of the overdraft or limit to which the account-holder may overdraw should be repeated at the top of each page of the account.

DEATH.

On the death of an account-holder, payment will, of course, be only made to the executors or administrators, but not before the probate of the will or the letters of administration are exhibited.

On the exhibition of these, the following particulars should be given in the ledger:—

Date of Death,

Names of Executors or Administrators, and

Date of Exhibition.

And in the probate register which should be kept, there should, with the above particulars, be also inserted the

Date of Probate or Letters of Administration,

Place of Registry, and

The Amount under which sworn,

followed, where necessary, by particulars or by a short abstract of the Will.

A heavy penalty is imposed by the Stamp Act upon any one who administers without first procuring probate or administration, which requires to be obtained within six months from the death, or within two months after the determination of any suit or dispute respecting the will or the right to administer.

It is only in very exceptional circumstances, as where the sum is of trifling amount, the property left insignificant, and the claimants in very poor circumstances, that payment should be made without the proving of the will or taking out letters of administration, the right of the persons claiming being, of course, known, and indemnity, if thought necessary, obtained.

On the death of a joint trustee or joint account-holder,

Joint Account-holder.

Overdrawn
Deposit
Account.
Marking
Overdraft.

Death.

Probate of
Will and
Letters of Ad-
ministration.

Payment with-
out Exhibition
of Probate, &c.

Joint Account-holder.

Evidence of Death.

payment should only be made to the survivor on proper evidence of the death being furnished, that is, production of both the certificate of registry of death and the certificate of burial. In a case involving proof of death, that of *Riseley v. Shepherd*, before the Lord Chancellor, 27th June, 1873, being a petition for payment of a fund out of Court, it was proposed, in support of the petition, to prove the death by a certified copy of an extract from the register of deaths and an affidavit of identity; and, in answer to Lord Selborne's question why the certificate of burial was not produced, it was urged that a certified copy of the entry in the register of deaths was admissible in evidence by Lord Brougham's Evidence Act of 1851, 14 and 15 Vic., 99, and is the evidence usually required in the registrar's office; but Lord Selborne, in remarking that the Act makes a certified copy of the entry of the death admissible in evidence, and that it must be admitted, added that it ought in general to be supported by the affidavit of some one who can speak to the burial or otherwise, and his lordship desired the certificate of the burial to be produced.

Signatory of Company.

Partner.

Disclosure.

On the death of a signatory of a limited joint-stock company, the requisite certified copy resolution of the company appointing his successor should be obtained, and the particulars duly given in the ledger.

Unless continued liability is preserved by the will or by the partnership agreement, all operations on the overdrawn account of a firm should cease upon the death of a partner in the firm, and a new account should be opened for all subsequent transactions. The liability of the deceased's estate is thus preserved for the debt on the old account, which would otherwise be liquidated pro tanto by payments made to credit by the surviving partners.

On the death of an account-holder, any information respecting the account should, of course, be given only to the executors or administrators.

PART II.

BANKRUPTCY.

With reference to the branches, on the failure of any one indebted to the Bank, the manager should at once furnish head office with full particulars of the position of the account, including a complete view of all the bills, whether indorsements or acceptances, and all other liabilities, including guarantees, etc., and should report whatever circumstances it may be of importance to communicate in connection with the failure, stating whether it, or the causes which have conduced to it, will likely affect any other of the Bank's constituents.

Steps to be taken at Branch, in cases of failure.

Where proceedings are instituted under the Bankruptcy Act, the manager should forward to head office the statutory notice, accompanied by a statement of the debtor's liabilities to the Bank, including interest, commission, and all other charges, to the date of the notice, giving at the same time details of the securities held, with the value of each, adding upon what basis the value is estimated.

As there may be other liabilities not known to the manager of the branch, the affidavit, or proof annexed to the notice, should be filled up at head office ; and as these forms vary, and some of them are not applicable to a bank, though there is one form intended to be used by the agent of a company, the following are the terms which should be adopted in filling up the form received :—

Proof.

IN THE COUNTY COURT OF .

In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by A.B., of , in the county of , merchant.

I, , of , in the county of , Inspector-General (or Manager-General) of the Provincial Bank, having its registered offices at Liverpool, in the county of Lancaster, make oath and say as follows:—That I am duly authorized, under the seal of the said Provincial Bank, to make the proof of debt, and to vote at meetings of creditors on its behalf, and to appoint a proxy, if necessary; and that it is within my own knowledge that the said A.B. was, at the date of the institution of the said proceedings, and still is, justly and truly indebted to the said Provincial Bank in the sum of , for advances on current account and bills discounted, for which said sum, or any part thereof, I say that I have not, nor hath the said Provincial Bank, nor. hath any person by my or their order, or to my knowledge or belief, for my or their use, had or received any manner of satisfaction or security whatsoever from the said A.B., save and except the following:—

Mortgage of works, hereditaments, and premises in , by the said A.B., dated , and valued at £
Mortgage of the ship , by the said A.B. dated , and valued at.....

Conveyance of land and premises at , by , to the said A.B., dated and valued at

Transfer of shares in the Company by the said A.B., dated , and valued at.....

Assignment, dated of Insurance Company's Policy on life of the said A.B., for £ , dated , and valued at.....

All of which I hereby value, as per respective } estimates above, at } £

Date.	Drawer.	Acceptor.	Amount.	Date when due.	Bills.

Besides dishonoured bills not debited, all current or unmatured bills should be specified under the above heading, the current bills following the dishonoured, and all should accompany the affidavit, for exhibition, at the general meeting of creditors.

At the end of the affidavit is an instrument of proxy, ^{Proxy.} Rule 85 under the Act prescribing that it shall be under the hand of the creditor, "or, if such creditor is a corporation or company, under the hand of an agent, stating that he is duly authorized on its behalf," and that such instrument "shall, unless it is expressly stated otherwise therein, be deemed and allowed as an authority to the appointee of the creditor to vote for him, and on his behalf, at all meetings of creditors in the matter, or adjournments thereof, and generally to act for the creditor in all other matters under the Act, of whatsoever kind, as fully as the creditor himself could act."

To prevent delay in the proceedings at the meeting, the affidavit, or proof, should be made or sworn beforehand, ^{Swearing of Proof.} although there is at the meeting a commissioner in attendance, and before whom, in cases of necessity, the proofs may be sworn.

It is to be particularly observed that, with regard to securities held, only those should be specified in the proof which have been received from the debtor's estate, and not guarantees or other securities given by third parties. ^{Securities.}

And if the bankrupt is a firm or company, and security is given by an individual member of the firm or company, of his own private property, on behalf of the partnership, this security should likewise not be specified in the proof.

Bills Lodged. In the case of "bills lodged," or bills not discounted, or credited the debtor's account, but held as collateral security, these cannot be embraced in the claim, but are held over for recovery, against the other obligants only, on maturity. It is not unusual, however, for unscrupulous creditors to include these in their claim, leaving it for the trustee on the bankrupt's estate to detect and strike them out. Though excluded in the amount of claim, the bills, however, may be set out with the others in the form of proof.

It is now very clearly established that bills lodged in this way cannot be claimed by the trustee, or treated as securities, within the meaning of the Bankruptcy Act, requiring either to be valued or delivered up, for the benefit of the general body of creditors—the definition, "secured creditor," by this Act, 1869, sec. 16, sub sec. 5, being: "any creditor holding any mortgage, charge, or lien on the bankrupt's estate, or any part thereof, as security for a debt due to him." The only property affected by bills is the debt due by another to the bankrupt, which has never formed part of his estate, so as to be subject to a lien. Besides, bills of exchange have, as the great medium of commerce, been long much favoured by the law, and if a holder of such instruments were liable in a case of bankruptcy to deliver them up, it would have the effect of very much impairing their value. In the case of *ex parte Schofield*, the Court of Appeal, on 24th July, 1879, affirmed the decision of the Chief Judge, that bankers were entitled to retain such bills, and to recover what they could from the other obligants, provided, of course, that they did not receive, in the whole, more than twenty shillings in the pound. In support of the appeal, it was urged that negotiable instruments held in security of a debt ought to be treated similarly to any other security; but the Court said that the practice of the Court of Bankruptcy had long been settled to the contrary with regard to bills of

exchange, and they shrank from introducing an alteration in this long-established practice.

At the assessed value of the securities, the trustee of the debtor has the option of paying the amount and receiving them up for the benefit of the creditors generally, and in such case a dividend will, of course, accrue only on the balance of the debt.

Assessment of
Securities.

Where there is a difficulty in putting a value upon securities held, the Bank may defer proving, but in this case it is advisable to give notice to the trustee, by letter, intimating that they have a claim to make, and stating its probable amount. By so doing, it will be incumbent upon the trustee to thereafter communicate with the Bank, and to specially intimate the latest time that can be allowed for proving.

Great care is requisite in attaching a value to the securities, as, if they are undervalued, the surplus must be handed over to the trustee for the benefit of the creditors, and, if overvalued, no claim can be made for the difference.

The general rules made, in pursuance of the Act, by the Lord Chancellor, with the advice of the Chief Judge in Bankruptcy, and designated "Rules of Court," on the above points, are :—

Rule 99. A secured creditor, unless he shall have realized his security, shall, previously to being allowed to prove or vote, state in his proof the particulars of his security, and the value at which he assesses the same, and he shall be deemed to be a creditor only in respect of the balance due to him, after deducting such assessed value of the security.

Rule 100. Any secured creditor so proving, shall be bound to pay over to the trustee the amount which his security shall produce, beyond the amount of such assessed value, and the trustee shall be entitled, at any time before realization of such security by the creditor, to redeem the same, upon payment of such assessed value.

Assessment of
Securities.

Rule 101. The proof of any such creditor shall not be increased in the event of the security realizing a less sum than the value at which he has so assessed the same.

And by Rule 136. A creditor who is desirous of giving credit for the value of his security, in order to entitle him to a dividend in respect of the balance of his debt, after deducting the assessed value, shall give notice thereof to the trustee, and the value of his security shall be determined in the same manner as the value of the security is to be determined, as prescribed, with reference to the balance upon which a secured creditor may vote, and such creditor shall give credit for the value within fourteen days after he shall be called upon by the trustee so to do, unless he shall be out of England, and then within such reasonable time as the trustee may fix, having regard to the means of communication between England and the place where the creditor may be, and, in default thereof, shall be deemed to be fully secured. If the trustee, or any other creditor, shall be dissatisfied with the value put on the security, the trustee may require the security to be realized.

Consequently, under these rules, in *ex parte Meade King, in re Palethorpe*, before Vice-Chancellor Bacon, the chief judge in Bankruptcy, 26th April, 1875, on appeal from the Liverpool County Court, where a creditor proved, on 17th October, 1874, for £1,209 1*s.* 4*d.*, against which he held the debtor's life policy for £1,200, assessed at £200, the then surrender value, and the debtor dying in the following month, before the close of the liquidation, the creditor received, in February, 1875, £1,195 4*s.* 5*d.*, the amount assured, less discount, it was held that he could not retain any of the amount beyond the £200 at which he valued the policy, but that the surplus belonged to the trustee, though it was contended by the creditor that the rules 99 and 100 applied only to the temporary proof for voting, and not to proof for receiving dividends, which is dealt with by rule 136, and the effect of which, it was urged,

placed the creditor, when his security had been valued, in the same position as if it had been realized by sale. The Chief Judge, however, in delivering judgment, said : "The law seems to me to be expressed in the most distinct terms. The creditor may put whatever value he likes upon the security ; if the trustee is not satisfied with that, he may take means of having the value ascertained more accurately, according to his notion. But whether the one thing or the other is done, this is plain, if the creditor chooses to retain the security at a value he annexes to it, and afterwards receives more as the value of the security than the amount he had assessed, that surplus belongs to the bankrupt's estate, and is administrable as a part of his estate." And "it is suggested in argument that the trustee never offered to redeem, and that the creditor intended to retain the policy and continue to pay the premium. If he did, he did it under the provision of the law, and did it, as I conceive, at his risk. To attempt to treat it as if it were a mortgagee, coming in under the 78th rule, or, which is the same thing, under Lord Rosslyn's order, is impossible.* It is not like that. The creditor does not come in and say, 'Now realize my security ; its value must be ascertained.' The creditor might have purchased for himself if he had thought fit, and, if he had, he might have foreclosed the mortgage and become the owner of the security. He did not ; he chose to keep it in his hands and pay the premium, and though for any premium he paid he might be entitled to be reimbursed on the security being realized, he could not, in

* Rule 78 is in the following terms :—Upon application by motion by any person claiming to be a mortgagee of, or to have security over, any part of the bankrupt's estate or effects, real or personal, and whether such mortgage or security shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature, the court will proceed to inquire whether such person is such mortgagee, or is entitled to such security, and for what consideration and under what circumstances ; and if it shall be found that such person is such mortgagee, or is entitled to such security, and no sufficient objection shall appear to the title of such person to the sum claimed by him under such mortgage or security, the court will then proceed to take an account of the principal, interest, and costs due upon such mortgage or security, and of the

Assessment of Securities. of the face of this enactment and of the rules, say, ‘I am entitled to the benefit of any larger sum than the amount I have assessed that shall at any time be received as the value of this security.’”

The case seems to have been a hard one for the creditor, as the security was kept alive for a number of years by his payments alone, which thus secured a fund for distribution to the other creditors.

Voting. For the purpose of voting, a secured creditor shall, by section 16, sub section 4, of the Act, “be deemed to be creditor only in respect of the balance, if any, due to him after deducting the value of his security ; and the amount of such balance shall, until the security be realized, be determined in the prescribed manner. He may, however, at or previously to the meeting of creditors, give up the security to the trustee, and thereupon he shall rank as a creditor in respect of the whole sum due to him.”

Guarantor. When an account is guaranteed, the manager, on the failure of the account-holder, should make due application to the guarantor for payment, intimating at the same time to him that interest at the rate of — per cent. per annum will run upon the amount until paid, and a copy of the communication should on the same day be forwarded to head office.

If the account be fully secured, or more than secured, by the guarantee, the manager should learn, and duly acquaint head office whether the guarantor wishes the Bank to rank upon the estate or to surrender the guarantee on payment, so that he may rank upon the estate himself.

rents and profits, or dividends, interest, or other proceeds received by such person, or by any other person, by his order or for his use, in case he shall have been in possession of the property over which the mortgage or security shall extend, or any part thereof, and the court will then direct notice to be given in such public papers as it shall think fit, when and where, and by whom, and in what way, the said premises or property, or the interest thereon so mortgaged, or over which the security shall so extend, are to be sold, and that such sale be made accordingly, and that the trustee (unless it be otherwise ordered) shall have the conduct of such sale ; but it shall not be imperative on any such mortgagee to make such application.

If the debtor wishes to make a private arrangement with his creditors, or to settle his affairs by composition, the charges on the account should be computed to the date of his intimation; and, if it be found necessary for the manager to attend the meeting, he should be careful to see that no undue advantage is being taken of the creditors, and that any offer of composition is accompanied by a full statement of affairs, prepared by a thoroughly independent and impartial person, and that every item is subjected to a rigorous investigation. It is to be remembered that the effect of resolutions to accept a composition is to leave the estate entirely in the hands and under the control of the debtor, and affected by all the liabilities and incumbrances to which it was previously subject, so that any offer of composition should be well weighed, and should, in the majority of cases, not be assented to, unless secured either by an undoubted surety, or by an assignment of a sufficient proportion of his assets to a trustee on behalf of the creditors.

In *ex parte Jones*, on appeal, 5th August, 1875, where execution was levied after a petition for liquidation had been filed, but before the first meeting of creditors had been held, and they, by resolution, duly confirmed and registered, agreed to accept a composition, it was held that, as the doctrine of relation back did not apply in composition, the security obtained by the execution was not displaced, that the composition did not bind the execution creditor so as to affect his security, and that he was entitled to the proceeds of the execution, Lord Justice James observing in his judgment that "in this case, by due process of law, the respondent had put a writ into the hands of the Sheriff, and had obtained a security over all the movable goods of the debtor. That was his right, and that right he still had, unless it could be shown to have been taken away. If proceedings had been taken in bankruptcy or by liquidation, which were equivalent, no

Arrangement
for
Composition.

doubt his right would have been lost, as the goods would have ceased to be the goods of the debtor, and would have become the goods of the trustee, and thus the security would have been displaced. But, under a composition, the goods never ceased to be the goods of the debtor, against whom this writ was a binding security."

And as to enforcing payment from the surety, it was held, on appeal, in *ex parte Mirabita*, in re Dale, 23rd July, 1875, that the Court of Bankruptcy has no jurisdiction to enforce the payment of a composition by a surety. The remedy of creditors is against the trustee, who can in his turn sue the surety for the amount of the composition.

Private
Arrangement.

In a claim upon bills or promissory notes, when the acceptor or maker calls his creditors together privately, and not under the Act, and offers a composition, it is to be noted that the holder, before he accepts it, should procure the consent of the previous obligants to the bill, unless, in signing the deed of composition, he reserves his right against them, for such a reservation rebuts the implication of law that the sureties were meant to be discharged, and also prevents their right against the debtor from being impaired.

Distinction
with reference
to Sureties in
proceedings
under the Act.

In proceedings under bankruptcy or liquidation, however, a holder may prove and receive a dividend without the assent of the other obligants, or even against their assent, without thereby losing his recourse against them. The discharge of the debtor under the bankruptcy laws not being an act of the parties, will not enure to discharge a surety. "The legislature," said Lord Chief Justice Tindal, in *Brown v. Carr*, 7th May, 1831, 7 Bingham's Reports, 515, "has provided that the surety, if he pays the debt, may stand in the place of the creditor where the creditor has proved, or may prove the debt himself where the creditor shall not have proved under the commission. It is the duty of the surety to pay the debt, and if he declines so doing, and thereby permits the creditor to prove, the signing

Sureties not
released in
proceedings
under the Act.

the certificate of conformity, which is a power given by the statute to the proving creditor, cannot be considered as released in proceedings under the Act. Sureties not

an act done by the creditor, which altered the surety's right without his control, and scarcely, indeed, without his consent. It is not an act beyond his control, for he might have paid the money in due time, and prevented the creditor from proving ; and if he voluntarily lies by and omits the only means of preventing it, he may not unreasonably be considered to have assented to the act. Besides, the signing the certificate, where the creditor is satisfied that the bankrupt has conformed to the provisions of the statute, is a moral obligation on the creditor ; it is a power vested in him by the Act, which he is morally bound to exercise where the truth of the case requires it. The exercise of such a power, therefore, by the creditor, where he is placed in the condition to exercise it by the laches of the surety, cannot be considered as ranging itself under those voluntary acts of the creditor which release the surety."

And Lord Eldon, 2 Russell, 600, said—"As the law now stood, the surety might go in under the commission and prove ; he had distinct and independent rights of his own, and, if he did not choose to take the course which would enable him to assert those rights, he could not expect aid from a court of equity."

And, in *ex parte Jacobs, re Jacobs*, 15, 29th January, 1875, 23 W. R. 251, where a bill-holder attended a meeting of the creditors of the acceptor of the bill, in pursuance of the 126th section of the Act, and voted for a resolution under which a composition was accepted and the acceptor discharged, it was held that the acceptor must be treated as discharged by operation of law, and not by the voluntary act of the bill-holder, and that, therefore, the drawer of the bill remained liable upon it. The result would be the same if the proceedings were taken for liquidation by arrangement, under the 125th section of the Act. *Wilson v. Lloyd*, 21 W. R., 507, L. R. 16, Eq. 60, was disapproved ;

Sureties not released in proceedings under the Act.

and *Megrath v. Gray*, 22 W. R., 409, L. R. 9, C. P. 216, was approved and followed.

The Court observed that there could be no doubt that, if the holder of a bill, by becoming party to a deed or agreement, independently of any Bankruptcy Act, agrees to accept a composition from the acceptor, he thereby discharges the drawer; but, on the other hand, it is equally clear that, if the acceptor is discharged from his liability, by operation of law, by becoming a bankrupt, the liability of the drawer to the holder is not thereby affected. And they added:—"We think that the discharge of a debtor under a liquidation or a composition is really a discharge in bankruptcy by operation of law. When a creditor voluntarily agrees to a composition by deed or agreement with the acceptor, it is by his act alone that the acceptor is discharged, and the position of the drawer altered; when, however, a debtor summons his creditors under the 125th and 126th sections of the Bankruptcy Act, the proper majority of the creditors have power to assent to the terms by which the debtor is to be discharged, whether the creditor, who is the holder of the bill, chooses to attend or not, and chooses to vote or not. The consequence of holding that the holder of a bill could not vote at a meeting of the acceptor's creditors without discharging the drawer, would be that in many cases a great number, and in some cases the majority, of the creditors could not vote at the meeting. On the other hand, if the resolutions for liquidation by arrangement or for composition were to contain a reserve of remedies by the creditors against any other person than the debtor, the consequence would be that the debtor would not, either by arrangement or composition, be completely discharged from any of his debts in respect of which the creditor had a remedy against any other person, which, we think, would be contrary to the intention of the Act."

Fraudulent Preference.

If a creditor enter into any agreement with the debtor,

unknown to the other creditors, by which an undue advantage would be gained, this would constitute a fraudulent preference, and he would be compelled to repay any money so obtained by him. This is well settled, both in law and in equity. Thus, in *McKewan v. Sanderson*, before Vice-Chancellor Malins, 27th April, 1875, where a bank withdrew its opposition to a proposed composition of 2s. in the pound, in consequence of a guarantee being given them by the debtor's brother, which, if met, would have secured them 10s. or 12s. in the pound on their advances, it was held, on demurrer to a bill filed by the bank to enforce the guarantee, that the taking of such a guarantee was an attempt to acquire an undue advantage over the other creditors, and the bill was dismissed with costs, the Judge stating that "all the courts, as appeared from the authorities, were agreed that, if one creditor entered into any engagement whatever with the debtor with the view of obtaining an advantage over the other creditors, and that arrangement was not communicated to them, whether that arrangement might be merely to stay away from a meeting of the creditors, or whatever it might be, that arrangement amounted to a corrupt bargain, and the court would compel the creditor to restore what he had obtained."

Under the old Bankruptcy Acts, no person could be made a bankrupt unless he was both a trader and a debtor within the meaning of the Acts, and no person was a debtor unless a remedy could be had against him as upon and for a debt. The present law has removed one of these conditions, that of trader; and, as the other condition still remains, it follows that married women, who, as we have seen ante page 36, cannot be sued personally as a debtor, cannot be made bankrupts, excepting those trading separately from their husbands under the custom of the City of London. This has been recently finally established in the case of *ex parte Jones*, by the Court of Appeal,

Fraudulent Preference.

Married Women cannot be made Bankrupts.

Married
Women
cannot
be made
Bankrupts.

17th July, 1879, Lord Justice Cotton remarking that "the principle, as it was expressed by Lord Justice James, in the case of *The London Chartered Bank of Australia v. Lamprière*, was that the married woman intended to contract, so as to make her separate property the debtor. It was not the woman, as a woman, who became liable, but her engagement had made that part of her property which was settled to her separate use the debtor, and liable to satisfy her engagement. She herself was not a debtor within the meaning of the Bankruptcy Act, and, therefore, she could not be made a bankrupt."

Bankruptcy
Act, 1869.

Of the present Bankruptcy Act, 32 and 33 Vic., cap. 71, passed 9th August, 1869, and which came into operation on the 1st January following, it may be noted that it was passed with the view of amending the law, and remedying the evils which existed under the previous Bankruptcy Acts. The practical part of its provisions is based in some measure on the Scottish system, and its main object was to allow the creditors themselves to look after their own interests in an expeditious and inexpensive manner, and to secure an equitable division of the bankrupt's property.

Instead of the former courts and their numerous staffs of commissioners, official assignees, messengers, and other officials, there was established a London Court, with a chief or sole judge; and, for the country, the County Courts took the place of the former "Country District Courts of Bankruptcy"—the two bankruptcy jurisdictions thus constituted being the "London District" and the "Country District." The Act is applicable to non-traders as well as traders, excepting "a partnership, association, or company corporate, or registered under 'The Companies Act, 1862.'"

Proceedings
under.

The proceedings under the Act may be in "Bankruptcy," or under the immediate supervision of the Court; by "Liquidation by Arrangement"—not before the Court, though under its control; or by "Composition," apart from any intervention of the Court.

The proceedings in Bankruptcy and Liquidation are almost similar; in the latter case the debtor, however, initiating them, instead of the creditor. At the first general meeting of the creditors, a fit person, whether a creditor or not, should be appointed to fill the office of trustee of the property of the bankrupt, and he is entitled to remuneration, and should give security. To superintend the administration by the trustee of the bankrupt's property, the creditors may choose several of their number, but not exceeding five, as a committee of inspection, the largest of the creditors, and those most experienced in such matters, being usually selected for the purpose.

At their first or any general meeting, the creditors may prescribe the bank into which the trustee is to pay any moneys received by him. In Bankruptcy, section 30, if he keep more than £50 in his hands for more than ten days, he must pay interest at 20 per cent. per annum on the excess, and, unless he can prove to the satisfaction of the Court a sufficient reason for retaining the money, he shall, on the application of any creditor, be dismissed from his office, and have no claim for remuneration, and be liable to any expenses to which the creditors may be put in consequence of his dismissal. In Liquidation, section 125, sub section 8, it is merely enacted that the creditors may prescribe "the sum which he may retain in his hands."

By Rule 109, where the creditors have failed to appoint the bank into which the trustee is to pay all moneys received by him, he is to pay them into such bank as the committee of inspection or, where there is no committee, the Court shall appoint.

All debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the commencement of his bankruptcy, or to which he may become subject during the continuance of the bankruptcy, in consequence of any obligation incurred previously to that date, are deemed debts provable in bankruptcy; and

Proceedings
in Bankruptcy
and
Liquidation.

Debts
provable.

Debts
provable.

all debts for wages and salaries not beyond a certain time or amount, and rates and taxes due, are declared to be preferential debts, payable in priority to all other debts. No person having notice of any act of bankruptcy, available for adjudication against the bankrupt, can prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice. Sections 31 and 32.

Avoidance of
Fraudulent
Preferences.

For the first time, by express enactment, it is declared, section 92, that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, etc., the same become bankrupt within three months thereafter, be deemed fraudulent and void as against the trustee; but the rights of a purchaser, payee, or incumbrancer, in good faith and for valuable consideration, shall not be affected.

Payment of
Moneys and
delivery of
Securities by
Agents &c., to
Trustee.

And section 93 enacts "that any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all moneys and securities in his possession or power as such officer or agent, if he be not by law entitled to retain as against the bankrupt or the trustee; if he do not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee." From this provision, the importance of having all securities for advances put in a legally effective shape, particularly with questionable accounts, will be apparent; but this point will be fully considered under the head of "Securities" in the second volume of this work.

Set-off.

By section 39, where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and claimant, then there will be a right of set-off, and the balance of account only will be claimed or paid on

either side respectively ; but no one will be entitled to this set-off against the bankrupt where, at the time of giving credit, he had notice of an act of bankruptcy committed by the bankrupt and available against him for adjudication.

The practice of set-off, it may be noted, has been long recognized by Courts of Equity, and it was unknown to Courts of Law until introduced by statute in the time of Anne. "The jurisdiction of Courts of Equity in set-off," says Byles, 375, 13 ed., "did not depend on the statute law; it existed before any Act of Parliament on the subject, and has, since the statutes, been exercised in cases which they will not reach."

The most recent case in connection with set-off is that of *ex parte Morier, in re Willis Percival and Company*, before the Court of Appeal from the Court of Bankruptcy, 17th July, 1879. Mr. Morier and his sister, Miss Morier, kept with Willis an account as executors of their father, and Mr. Morier had a private account. When Willis stopped payment, £1,404 5s. 6d. stood to the credit of the executors' account, and £1,206 2s. 3d. was the amount overdrawn on Mr. Morier's account. About £10 was due for rates and taxes on the testator's house, and about £50 of costs to the executors' solicitors, for which latter amount a cheque had been drawn but not presented at the time of the stoppage. In the liquidation Mr. Morier claimed to prove for £198 3s. 3d., setting off the balance due from him against the executors' balance, which, he contended, was in equity his, the testator's estate being clear of liability, and he being, as residuary legatee, entitled to the net residue ; but it was held that he could not prove in the liquidation for the balance between the two accounts, but must pay up the amount of his overdraft and prove for the sum to the credit of the executorship account, and that the rules of equitable set-off or mutual credit could not apply unless he was so much the person solely beneficially interested that in equity his sister could have been

Set-off.

compelled, without any terms or further enquiry, to transfer the joint account into his name alone.

In delivering judgment, Cotton, L. J., said, "It is clear there can be no set-off at law. It is said, we must look to equitable rights, and, no doubt, if it could be established that Miss Morier's name was in the account merely as trustee with her brother for him, then the money would in equity be his to all intents and purposes, and there would be a right of set-off. But it was really part of the estate of the testator, of which they were joint executors. It was wholly or in part a sum transferred to them, as executors, as part of his estate, for the purpose of administration. It was an account liable to pay all the debts and legacies, and to provide for the annuities. We cannot hold that at the time of the stoppage it was no longer executorship money, but was held by the two as trustees for the one, unless we can see that that has been done which enables us to say that it was liquidated and ascertained to be a clear net residue which the son was entitled to have carried over to him absolutely, without any further accounts being taken or anything further done. I looked at the agreements to see whether there was any agreement that the balance should be treated as net residue belonging to the brother. There is nothing of the sort in the agreements. There is nothing like a taking the accounts so as to ascertain a balance, to be held as a trust fund to which he should be entitled as the absolute beneficial owner. There are only two cases which I need notice. One is *Bailey v. Johnson*, 6 L. R., 279, affirmed 7 L. R., 263, where the bankruptcy was annulled, and there was a set-off between money paid in by the trustee before the bankruptcy was annulled and money due to the Bank by the person who had been adjudicated bankrupt. That case was decided by the Court of Exchequer Chamber on the ground that, under section 81 of the Bankruptcy Act, when the bankruptcy was annulled, the property reverted to the person who had been

declared bankrupt, and became his from the time when it was first paid into the Bank. Therefore, of course, there was a set-off. In *Bailey v. Finch*, 7 L. R., 34, it was not necessary to give an opinion whether it was possible to apply equitable principles to the facts. It was there only necessary to deal with a legal set-off, which it was attempted to prevent, because one of the accounts had been opened in the name of the customer as executor. The principle of the decision was not that the fund was a trust fund from the nature of the account, or that the Bank had notice of that, but that they had notice that it was an account against which claims were likely to be made, and that if claims had, at the time of the bankruptcy, been made, they would have prevented the legal set-off, but that, as it was not shown there were any equitable claims against the fund, the legal right of set-off could not be interfered with. *Bailey v. Finch* does not touch this case."

And Brett, L. J., observed: "My view is that, the account standing in the names of the brother and sister, the case could not have been brought within the rules of equitable set-off or mutual credit, unless the brother was so much the person solely beneficially entitled that a Court of Equity, without any terms or any further enquiry, would have obliged the sister to transfer the account into her brother's name alone."

James, L. J., admitted the case to be a hard one, but that it must be decided on general principles, and that equitable set-off is always confined to cases where there is a plain admission of a simple liquidated trust fund. It had never been applied to cases where, on the final settlement of accounts between two persons and one, there would be a balance in favour of the one.

As regards dividends, it is prescribed by Rule 134 that all bills of exchange or other negotiable securities upon which proof has been made must be exhibited to the trustee before payment of dividend; and by Rule 131,

Dividends.

where a dividend is intended to be declared, the trustee shall give reasonable notice thereof to such of the creditors mentioned in the bankrupt's statement as shall not have proved their debts; and the notice shall also be gazetted.

Creditors
residing at a
distance.

And sections 42 and 43 enact that "it shall be obligatory on the trustee to make provision for debts provable in bankruptcy, appearing from the bankrupt's statements or otherwise to be due to persons resident in places so distant from the place where the trustee is acting that, in the ordinary course of communication, they have not had sufficient time to tender their proofs or to establish them if disputed; and also for debts provable in bankruptcy, the subject of claims not yet determined." And that "any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any moneys for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such moneys are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein."

Debts not
proved before
declaration of
Dividend.

And section 41 enacts that, in the event of the trustee not declaring a dividend at the expiry of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not having done so.

Non-
declaration.
of Dividend.

With reference to proof, under section 42, in the case of *ex parte Good, in re Lee*, a firm of manufacturers went into liquidation, being indebted to a bank in a large sum, in respect of which they had given security. The Bank sent in a proof for the whole amount of their debt, with a statement of their securities, which they said they intended to realize. The trustees gave the Bank notice to value their securities within fourteen days, and that the proof sent in had been rejected. The Bank refused to value their securities, being, as they alleged, unable to do so at

Delay in
proving by
Secured
Creditors.

that time, but gave notice that they did not withdraw their claim on the estate of the debtors. Subsequently, the trustees, without communicating with the Bank, declared a dividend of 3*s.* 6*d.* in the pound, from which the Bank were excluded. The next day, the Bank, having realized their securities, sent in a proof for the balance due to them.

Delay in
proving by
Secured
Creditors.

By Bacon, C. J., before whom the case came on appeal from the County Court at Dewsbury, 12th January, 1880, 28 W. R., 278, it was held that, on declaring the dividend, a sufficient reserve ought to have been made by the trustees for such dividend upon the claim of the Bank, and that the Bank were entitled to be paid the 3*s.* 6*d.* in the pound on such balance.

This decision, however, was reversed by the Court of Appeal, 17th March, 1880, 28 W. R., 553, it being held that in order to cast upon the trustee the duty, on declaring a dividend, of reserving sufficient for a dividend on the balance of a secured creditor's debt, it is necessary that notice should have been given to the trustee of the total amount of the debt, and either the amount which the security has realized or the value which the creditor puts upon it; otherwise the balance is not a debt provable before the dividend is declared, and the case does not come within section 42 of the Bankruptcy Act, 1869.*

* In this case, James, L. J., said: "The question is as to the trustee's liability, which has really been made a personal liability. It depends upon the sections of the Act." His Lordship having read sections 40–43, continued: "Here, beyond question, a dividend was declared before any proof alleged to be a proof was sent in by the Bank. It is admitted that what was called a claim in the first instance did not comply with the Act. It is admitted that it was a mere notification. It was not a proof. The other proof was sent in after the dividend had been declared, and the Bank was, therefore, not entitled to a dividend upon it (section 43). Why, then, was the trustee to retain funds to meet this claim? It is said that, under section 42, he ought to have made provision for it, in calculating the dividend, as a debt the subject of a claim not yet determined. But the section says that that is to be in the case of a debt provable in bankruptcy. Was this a debt provable in bankruptcy? The only provable debt would have been the balance after the property had been realized, or after the deduction of the value put upon the security by the creditor (section 40). Therefore, there was no debt provable in bankruptcy in respect of which the trustee could retain anything. He had no means of knowing anything about the debt provable in bankruptcy. The words in section 42, 'the subject of claims not yet determined,' must be meant

Proof against
Joint and
Separate
Estate.

Of proof against joint and separate estate, it is said by Byles, in his treatise on Bills, 457, 13th ed., that, "where the creditor knowingly holds the joint and separate security of partners for the same debt, he could not in general prove both on the joint and separate estate. The application of this rule to bills on which there were the names of two firms, in which firms were common partners, was involved in great uncertainty. Upon principle, it should seem that in such cases there should be double proof."

Proof in
respect of
distinct
Contracts.

By section 37 of the Act, it is enacted that, "If any bankrupt is at the date of the order of adjudication liable in respect of distinct contracts, as member of two or more distinct firms, or as a sole contractor and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts."

to apply to a case where the trustee has reserved a claim for further evidence to be adduced, or where the trustee has decided adversely and there is an appeal to this Court; those would be cases of claims not yet determined. All proceeds on the notion that at the time there is a provable debt. The possibility of there being a claim in the future, by reason of the security proving insufficient, is not within the words. Therefore, I hold that there was nothing in respect of which the trustee could have made any reservation; and I think that there is no case made out of misleading by the trustee such as to entitle the respondent to a personal remedy against him. The case is reduced to the mere question of the legal rights of a secured creditor who, for some reason, does not choose to realize or value his security before a dividend is declared. It occurred to me that there might be a difficulty where it was not possible to realize the security at the time, as, for instance, where it was an equitable mortgage, to realize which an action was pending. But there is a conclusive answer in the very comprehensive terms of section 72, which enables the Court to give a remedy for every wrong done in distributing the bankrupt's estate, and to give effect to every just claim. The person aggrieved might apply to the Court for an order to make the claim good, and the Court would have a sufficient power under section 72. Upon the plain words of the Act itself, the respondents are not in a position to say that they have a debt provable in respect of which a dividend ought to have been reserved to await the realization for their security."

And Brett, L. J., observed: "I agree with the statement that the trustees had notice that there would be a proof sent in in strict form; the Bank would at some time send in a proof stating the amounts due and realized, and the balance. Then comes the question, whether it is sufficient, in order to impose a liability on the trustees, to give notice that a proof in proper form will be sent in, or whether it is not necessary that there should be a claim in such form as would amount to a proof for the debt claimed; that is to say, whether the

By the House of Lords, in the case of *Banco de Portugal v. Waddell*, from the Court of Appeal, whose judgment was affirmed, 16th, 19th March, 1880, where two partners, father and son, of the name of Hooper, carried on business in London, as wholesale wine and spirit merchants, in the name of "Richard Hooper and Sons," and at Oporto, as port wine shippers, in the name of "Hooper Brothers;" and the Oporto firm drew bills which were accepted by the London firm, and both firms failed, and the holders of the bills, having received a dividend of 8s. in the pound in the Portuguese liquidation, tendered a proof for the full amount of the bills in the English liquidation, it was held that the holders could only prove in the English liquidation on condition of bringing into account the dividend received in the Portuguese liquidation, Earl Cairns, C., in his judgment, remarking that the above section of the Act

particulars must not amount to this in the case of a secured creditor—whether he must not have sent in, before a dividend is declared, particulars shewing the amounts due and realized, and the balance, or showing the amount due, the valuation he puts upon his security, and the balance. The conclusion I arrive at—with difficulty, of course—is that notification must be given to that extent. It must contain an assertion of the amount of the debt, particulars of the security, and either assert that it has been realized at such and such an amount or put a value upon it. Then, if it is sent in, the trustee may be advised to dispute it; and, if he does, the question of reserving arises. He may then declare a dividend; but, if the claim has been made in form, he must make a sufficient reserve, and then he will not have gone beyond his duty. That is what is meant by Rule 312. This case may be taken as a test:—Suppose, at the moment before the dividend was declared, the trustees had rejected this claim that is called a proof, and the Bank had said it was sufficient in form. If that had come before the Court, it would have had to say it was not right in form if those particulars which I have mentioned were not there. Rule 272 also confirms the view which I have expressed. As to the difficulties suggested as being in the way of a creditor called upon to realize or value when he practically cannot do either, they are met by section 72. If there was such a difficulty here on the part of the Bank, there was their remedy. Under the circumstances, the Bank not having, before the dividend was declared, sent in a proof or a notification to the trustees such as to require them to make a reserve to meet the Bank's claim, they are not liable."

Cotton, L. J., in giving judgment to the same effect, said "that, although the trustee could not compel realization directly, by taking the matter into his own hands or calling upon the creditor to realize, yet he could indirectly force the creditor by refusing to take his valuation, and so pressing realization as the alternative. The order of the Court below would be discharged, with costs, but without prejudice to a proof for the balance due to the Bank, which would have priority to the extent of payment of the ratable dividend which the other creditors had received out of any further assets which might be realized by the trustees."

Proof in
respect of
distinct
Contracts.

Proof in
respect of
distinct
Contracts.

"supposes a case quite foreign to the present one, which is a case of one bankruptcy, for the debtors do not constitute distinct firms by reason of their trading both in Portugal and in England. The case, therefore, stood as it would have stood irrespectively of the statute. That was what was decided by the Lords Justices of Appeal in *ex parte Wilson*, in re *Douglas*, 7 L. R., 490, and if the creditors seek to prove in the English liquidation, they must bring into account what they have received in the liquidation proceedings in Portugal." Lord Blackburn also observing, "the Legislature evidently meant that there could be a proof against both firms, but that if the members of both were identical you could not prove more than once, and thus the fact of the same persons being both drawers and acceptors of the bills can make no difference."

Discharge.

Of the discharge in Bankruptcy, it is enacted, section 48, that the bankrupt will not get his discharge unless the Court is satisfied "that a dividend of not less than 10s. in the pound has been paid out of his property, or might have been paid, except through the negligence or fraud of the trustee," or "that a special resolution of his creditors has been passed, to the effect that his bankruptcy, or failure to pay 10s. in the pound, has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him."

Effect of
Discharge.

And section 49 enacts that an order of discharge shall release the bankrupt from all debts provable under the bankruptcy, with the exception of debts due to the Crown, unless the Commissioners of the Treasury certify, in writing, their consent to his being discharged.

Position of
undischarged
Bankrupt.

If he fail to obtain his discharge, by section 54, he has three years allowed him to make up his 10s. in the pound, and during which period he is to be unmolested; but after that, the unpaid balance, without interest, of any debt proved in the bankruptcy, subject to the rights of any

persons who have become creditors of the debtor since the close of his bankruptcy, is to take the form of a judgment debt, and to be similarly enforced.

Position of
undischarged
Bankrupt.

Of the discharge in Liquidation, it is enacted, by section 125, sub sections 9 and 10, that the provisions with respect to the close of the bankruptcy, discharge of a bankrupt, etc., "shall not apply in the case of a debtor whose affairs are under liquidation by arrangement, but the close of the liquidation may be fixed, and the discharge of the debtor and the release of the trustee may be granted, by a special resolution of the creditors in general meeting," and "the trustee shall report to the registrar the discharge of the debtor, and a certificate of such discharge, given by the registrar, shall have the same effect as an order of discharge given to a bankrupt under this Act."

Discharge in
Liquidation.

To secure an arrangement by composition of a debtor's affairs, section 126 provides that this must be effected by an extraordinary resolution of the creditors, passed by a majority in number and three-fourths in value, and confirmed by a majority in number and value at another meeting, held within from seven to fourteen days after the first meeting. Creditors whose debts are not over £10 to be reckoned in the majority in value, but not in number, and the value of the debts of secured creditors to be, as nearly as circumstances will admit, estimated in the same way, and the same description of creditors to be entitled to vote at such general meetings as in bankruptcy. The debtor, as in liquidation, to be present, unless prevented by sickness or other sufficient cause, at both meetings, to produce statement of his debts and list of creditors, and to answer all inquiries. The resolution and statements are then presented to the registrar for registration. The composition is then valid and binding on all the creditors of the debtor named in his statement, but does not affect or prejudice the rights of any other creditors. The Court of Bankruptcy may enforce the provisions of any composition,

Proceedings in
Arrangement
by
Composition.

Proceedings in arrangement by Composition. on motion, by any person interested, and if it appear to the Court, on satisfactory evidence, that a composition cannot, in consequence of legal difficulties, or for any sufficient cause, proceed, without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly.

Fraudulent Debtors. In this Bankruptcy Act, it may be added, there are no provisions respecting fraudulent debtors, these persons being dealt with by 32 and 33 Vic., cap. 62, called the "Debtors Act, 1869," which, besides relating to the punishment of fraudulent bankrupts and debtors, abolishes for the first time the general right of a creditor to arrest and imprison his debtor.

As to proceedings of being made public, Creditors' Meetings being made public. With reference to the proceedings of meetings of creditors of a public character in the sense in which they understood the acts of a Court of Justice to be public; that they were of a quasi-private character; that, in his opinion, the registrar had a power vested in him of requiring, if he thought proper, that the proceedings should not be made public; and that he considered the registrar had exercised this power wisely in the present case. The notes of the reporters were consequently impounded by the Court.

Practical result of the Act. Of the practical result of the Bankruptcy Act, it may be said that proceedings are almost exclusively initiated under liquidation, and that at the first general meeting of creditors it is then determined whether this form of settlement or that of bankruptcy shall be followed, and in the vast majority of instances the former mode is selected. But even by this, the preferred mode—and certainly the best if properly carried out—the benefits accruing to the creditors are not such as might have been anticipated, and latterly, indeed, evils and abuses of almost as great

a magnitude and as flagrant a nature as those under the old system have prevailed. For this, considerable blame may, perhaps, be attached to the creditors themselves, to whom so much freedom has been given, in dealing with the affairs of the debtor, and no doubt it is to their supineness that the management has at last centred in the hands of a few professional men, and that they have been able to acquire so much power and influence, exercised to their own advantage, in the administration of debtors' estates. This, indeed, has become so notoriously the case, that it has been judicially said that "bankruptcy is a state of matters where a man owes largely, and an accountant and a lawyer divide his estate between them."

Practical
result of the
Act.

The following case, decided as these sheets are being sent to the press, may be taken as an illustration of the way in which charges are made, in many instances, by trustees and solicitors, in cases of liquidation by arrangement. In December, 1873, a firm of builders filed a liquidation petition in the Chelmsford County Court. At the first meeting of creditors in January, 1874, a liquidation by arrangement was resolved on, two trustees were appointed, as well as a committee of inspection, consisting of three creditors, one of whom, however, declined to act, and no one was ever appointed in his place. The debts due by the debtors to unsecured and partly secured creditors amounted to about £5,000. The assets realized about £2,100. In May, 1874, a dividend was distributed of 2*s.* 6*d.* in the pound, the only one ever paid. The liquidation was not closed until June, 1879. The sum of £586 was from time to time voted, by the two persons acting as committee of inspection, for the remuneration of the trustees, and of this amount they received as much as £388. The solicitor's costs amounted to about £600. A general meeting of creditors, summoned to close the liquidation and audit the trustees' accounts, passed the accounts containing these charges. Bankers at Saffron Walden, who were secured

Practical
result of the
Act.

creditors, and had not received the dividend, applied to the County Court, after they had realized their security, for an order that the trustees should pay them the dividend of 2s. 6d. in the pound on the balance which remained unpaid of their debt. The Judge made the order asked for, and his decision was affirmed by the Chief Judge. The trustees appealed.

James, L.J., in delivering his judgment, characterized the charges as monstrous, and could only call it a plundering of the estate, and that it was utterly impossible that the time which was stated to have been employed by the trustees and their clerks could have been properly and honestly employed in what was done; and Baggallay, L.J., observed that one period of time in which the charge made for the time occupied by the principal clerk of the trustees represented a number of hours occupied by him greater than the whole number of working hours during the period, taken at eight hours per day. The order appealed from was affirmed, and the appeal was dismissed, with costs. *Ex parte Snell, in re Cole, Court of Appeal, 29th April, 1880.*

It may be added that the County Court Judge made his order on the ground that the trustees "had assets in their hands applicable to the purpose." The Chief Judge affirmed the order, but on the ground that the creditor "had sent in a sufficient proof of his debt before the declaration of the dividend, though he had not then either realized or valued his security." This, as will be observed, is at variance with the decision in the case of *ex parte Good*, already considered, ante 76, and which since came before the Court of Appeal. While the Court of Appeal—James, Baggallay, and Bramwell, L.JJ.—affirmed the order, on the ground of "extortionate charges, that the County Court Judge was well warranted in saying that there must be in the hands of the trustees sufficient to pay the dividend to the applicants, that no committee of inspection existed as

required by the Act and the Rules, and that there was no pretence for saying that the matter had been honestly investigated by the general meeting ; that it was a mere sham as regarded investigation, and that an absent creditor could not be bound by what was done at it."

Practical result of the Act.

In our own experience, and on more than one occasion, we have been witness to the fact of an accountant appearing at a numerously-attended meeting of creditors, and voting himself into the trusteeship, and absolutely dictating to them in what manner, and by whom, the estate should be administered—all this done by means of the proxies he had already secured by canvassing, or solicitation. And, as a match to the cool effrontery, we have seen, emanating from insolvents themselves, circulars in terms such as follow : " Dear Sir,—Circumstances render it expedient that our firm should henceforth be continued in liquidation only, and we have to announce that it will be for the future carried on accordingly. All property in our care we have handed over, in the meantime, to Mr. John Smith, from whose position in our establishment, and high personal character, our customers and friends may depend upon every justice being done to them.—Yours very faithfully."

From all this, the nature of the Returns issued by the Controller in Bankruptcy relative to the misconduct of trustees and others in connection with bankrupts' estates, and the losses consequently sustained by creditors, can hardly be wondered at, nor can there be much doubt entertained as to the necessity which exists for some modification of, or change in, the law. And this desirable end might perhaps be accomplished without much disturbing the present modes of statutory procedure, if something like the following alterations were carried out:—

Change in the law desirable.

The abolition of proxies ;

The prohibition of canvassing, or solicitation by, or on behalf of, any one for the trusteeship ;

Change in the law desirable.

A more complete and effectual audit of the debtor's accounts than at present exists;

And the payment of the trustee, by commission, only on the amount available for distribution amongst the creditors.

Regulations might be made with advantage in connection with the intromissions of the trustee, and it would be desirable that all moneys received should be put to an account in the names of the committee of inspection, or some members of it, conjointly with the trustee's or trustees' names, if more than one be appointed upon the debtor's estate.

The present system, too, in connection with the valuation of securities held by secured creditors, might be amended, giving place, indeed, to the much more equitable one which exists in Scotland, and which enables the creditor, in the event of the trustee not acquiring the security, to retain the whole of the sum realized from its sale, provided the amount does not exceed that of his debt, and, should the security realize less than the value at which he has estimated it, he may, provided the sale is effected prior to the first dividend, amend his valuation, and take a dividend upon the actual balance of his debt.

There should also be a change in the regulations affecting the bankrupt's discharge, as, under the present system, it is far too easily obtained, and, under certain circumstances, it should only be granted coupled with conditions of liability attachable to after-acquired means or property; and in cases of unjustifiable extravagance in living, and reckless trading or speculation, continued while fully aware of his insolvent condition, he should be proceeded against as obtaining money or goods under false pretences. A highly beneficial end would indeed be served if, by any fresh legislative measures, a stigma were cast upon bankruptcy, the act stamped with dishonour, and punishment inflicted, from which the bankrupt is at present altogether free.

Greater severity might also with advantage attach to the punishment meted out to fraudulent debtors.

Change in the law desirable.

In concluding this section of our work, and also with reference to the previous one of "Accounts," it may be hardly necessary to observe that various other questions bearing upon these subjects, and upon the parties whose responsibility it has been, so far, only necessary to allude to partially, will have to be discussed at more or less length, and we shall endeavour in the course of our labours to omit no point of consequence, nor to overlook any matter of practice, with which the Banker ought to be fully cognisant.

PART III.

BILLS OF EXCHANGE.

Bills for
Discount.

The manager should exercise very great care and discretion in the reception of bills, and none but those of the most unexceptionable character should be discounted by him.

Two good names should be on every bill, and this rule should only be departed from in very exceptional instances, and when the indorser's position is so undoubted that the Bank can with entire safety depend upon him alone.

The manager should not discount bills for parties who are not regular clients of the Bank.

Unaccepted
Bills.

Unaccepted bills, when tendered by clients, should not be passed to their credit, and they should be given to understand that it is quite against banking rule to receive them in that condition for the purpose of being drawn against, and that they should always be handed in, accepted. If not taken back by the client for completion, the manager should then forward them for acceptance, and, on their return to him duly accepted, pass them to the credit of the client.

Bills
Lodged.

All bills not desirable to be dealt with before maturity, and which are left by wish of the client, should be held over as "Bills Lodged," and the amounts passed when received.

Unsecured composition bills should also, as a general rule, be treated as "Bills Lodged."

Bills drawn by clients on parties abroad should be received for collection and credit only. As a rule, bills for small amounts at an extended currency should not be discounted or passed to credit. Bills of this character, particularly in the case of small accounts, are generally attended with more than usual trouble and risk, and it is much better to be without them, as no commensurate profit arises from the other transactions on the account. When offered, especially by account-holders of limited means, and in a small way of business, they should only be received for collection and credit.

No renewal bills should be taken without the previous sanction of the Bank.

Great correctness should be observed in stating the amount current upon the memorandum to be attached to each bill forwarded head office.

At some of the branches, applications may be made by clients for permission to draw upon the Bank, at a more or less extended currency, for remittance purposes. Should the manager be of opinion that circumstances warrant the application, the matter should be submitted to head office, who will determine whether the application should be complied with or not, and, if acceded to, the acceptance should be effected by them, and not by the branch.

To avoid all risk, acceptances of this kind should only be made against cash transferred specially to cover the drafts.

When, however, applications of the above nature are made at the branch, they should in general be refused, and the client recommended to take, in the absence of a more direct drawing, a 21 days' draft on London, which in most cases will be found to answer the purpose intended, or to arrange for a credit being established with one of the Banks in the place where his creditor resides.

Some Banks, we believe, arrange with the client for his creditor abroad to draw upon them on demand, attaching to his draft the bills of lading, which are given up to the

Bills on
parties
abroad.

Bills for
small
amounts.

Renewal
Bills.

Advice of
total Bills
current.

Applications
for Bank to
accept.

Applications
for Bank to
accept.

Vigilance to
be exercised
in connection
with Bills.

client on receipt of his cheque to retire the draft; but this practice of permitting others than connections of the Bank to draw is of questionable propriety, and should not be followed.

The manager should exercise great vigilance in connection with account-holders from whom bills are received. Besides making it an invariable rule to satisfy himself in the usual way of the responsibility of each obligant, however high the position of the account-holder may be, he should make himself thoroughly conversant with the course of trade in which the latter is engaged, so as to better test the genuineness of the bills, and his suspicions should always be aroused if he finds any bill drawn out of the natural course of such trade, or if the account becomes unduly inflated, or bears evidence of marked irregularity as by the sudden multiplicity and diversified nature of the bills, or by the account-holder giving and taking longer credit than usual. Cross acceptances should also, of course, demand immediate attention and explanation. In speculative times, more than usual care should be exercised in the receipt of bills drawn against goods or commodities which are at temporary high and fluctuating prices.

To the form of the bill, and its regularity and validity, the strictest attention should be paid. Before discounting it, or passing it to credit, it will be necessary to be assured that it is perfect, or sufficient, as regards the—

1. Stamp.
2. Place of date.
3. Date.
4. Currency and maturity.
5. Request to pay, and payee.
6. Transferable words.
7. Domicile.
8. Amount.
9. Value received.
10. Signatures.

And, 11. That, in the case of any alteration, it bear the proper confirmation, satisfactory explanation having been obtained as to the cause of the alteration.

1. STAMP.—Formerly bills and promissory notes were not subject to stamp duty, and by 5 William and Mary, cap. 21, sec. 5, they were expressly exempted from it. By 22 George III., cap. 33, passed in the year 1782, a duty was for the first time imposed upon them, and between the passing of that Act and the Stamp Act of 1870, 33 and 34 Vic., cap. 97, now in force, there were numerous Acts changing, and, until that of 1854, 17 and 18 Vic., cap. 83, increasing the duties upon these instruments. By the Act of 1854, the duty was considerably reduced, and the distinction between long and short dates removed, there having been separate scales of duty for instruments within and beyond the currencies of two months after date, or 60 days after sight; but many regulations and provisions of the former Acts were maintained. By the Consolidation Act of 1870, the law has been still more simplified, and further diminished opportunities offered for that litigation and those fraudulent practices which prevailed under previous statutes, the requirements not only of commerce, but of general business, having been better considered, and the enactments framed in a more practical spirit than formerly. There is now no distinction between the duties on inland and foreign bills; and, with respect to bills drawn in sets, if one of the set is duly stamped, "the other or others of the set shall, unless issued, or in some manner negotiated, apart from such duly stamped bill, be exempt from duty," sec. 55.*

* The duty now in force on bills of exchange and promissory notes is:—

	s. d.
Bill of exchange payable on demand.....	0 1
Bill of exchange of any other kind whatsoever (except a bank note), and promissory note of any kind whatsoever (except a bank note), drawn or expressed to be payable	

Stamp.

Stamp on

Foreign Bills.

The duties upon foreign bills are to be denoted by adhesive stamps; and, by section 51, "Every person into whose hands any such bill or note comes in the United Kingdom before it is stamped shall, before he presents for payment, or indorses, transfers, or in any manner negotiates or pays such bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto."

"Provided as follows:—

"If, at the time when any such bill or note comes into the hands of any bona fide holder thereof, there is affixed thereto an adhesive stamp effectually obliterated, and purporting and appearing to be duly cancelled, such stamp

or actually paid, or indorsed, or in any manner negotiated in the United Kingdom:

Where the amount or value of the money for which the bill or note is drawn or made does not exceed

£5.....	0	1
Exceeds £5 and does not exceed £10.....	0	2
,, £10 ,, ,, £25.....	0	3
,, £25 ,, ,, £50.....	0	6
,, £50 ,, ,, £75.....	0	9
,, £75 ,, ,, £100.....	I	0

For every £100, and also for any fractional part of £100, of such amount or value..... I 0

Bank notes are subject to a higher duty, and by the Act, section 45, the term "Bank Note" means and includes—

1. Any bill of exchange or promissory note issued by any banker, other than the Governor and Company of the Bank of England, for the payment of money not exceeding one hundred pounds to the bearer on demand.
2. Any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding one hundred pounds on demand, whether the same be so expressed or not, and in whatever form and by whomsoever such bill or note is drawn or made.

And by section 46, a bank note issued duly stamped, or issued unstamped by a banker duly licensed or otherwise authorized to issue unstamped bank notes, may be from time to time re-issued without being liable to any stamp duty by reason of such re-issuing.

By section 49, the term "Promissory Note" means and includes—

1. Any document or writing (except a bank note) containing a promise to pay any sum of money.
2. A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed for the purposes of this Act a promissory note for the said sum of money.

shall, so far as relates to such holder, be deemed to be duly cancelled, although it may not appear to have been so affixed or cancelled by the proper person.

Stamp.
Stamp on
Foreign Bills.

“ If, at the time when any such bill or note comes into the hands of any bona fide holder thereof, there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for such holder to cancel such stamp as if he were the person by whom it was affixed, and upon his so doing such bill or note shall be deemed duly stamped and as valid and available as if the stamp had been duly cancelled by the person by whom it was affixed.

“ But neither of the foregoing provisos is to relieve any person from any penalty incurred by him for not cancelling any adhesive stamp.”

Of the mode of cancelling it is enacted by section 24, in substitution of several other Acts formerly in force, that

The exemptions from duty are—

1. Bill or note issued by the Governor and Company of the Bank of England or Bank of Ireland.
2. Draft or order drawn by any banker in the United Kingdom upon any other banker in the United Kingdom, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.
3. Letter written by a banker in the United Kingdom to any other banker in the United Kingdom, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.
4. Letter of credit granted in the United Kingdom authorizing drafts to be drawn out of the United Kingdom payable in the United Kingdom.
5. Draft or order drawn by the Accountant-General of the Court of Chancery in England or Ireland.
6. Warrant or order for the payment of any annuity granted by the Commissioners for the Reduction of the National Debt, or for the payment of any dividend or interest on any share in the Government or Parliamentary stocks or funds.
7. Bill drawn by the Lords Commissioners of the Admiralty, or by any person under their authority, under the authority of any Act of Parliament, upon and payable by the Accountant-General of the Navy.
8. Bill drawn (according to a form prescribed by Her Majesty's orders, by any person duly authorized to draw the same) upon and payable out of any public account for any pay or allowance of the army or other expenditure connected therewith.
9. Coupon or warrant for interest attached to and issued with any security.

The condition, “under the authority of any Act of Parliament,” in section 7, supra, is repealed by 35 and 36 Vic., cap. 20, sec. 7.

Stamp.
Cancellation
of Adhesive
Stamp.

"an instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so that the stamp may be effectually cancelled and rendered incapable of being used for any other instrument, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

"Every person who, being required by law to cancel an adhesive stamp, wilfully neglects or refuses duly and effectually to do so in manner aforesaid, shall forfeit the sum of ten pounds."

A demand draft from abroad is now only liable to a penny stamp duty, which is to be denoted by the ordinary Inland Revenue stamp.

Foreign
Demand
Draft.

Instrument
payable in
Foreign
Money.

Bills
purporting
to be drawn
abroad.

Rectification
when
improperly
stamped.

By section 11, where an instrument is chargeable with ad valorem duty in respect of any money in any foreign or colonial currency, such duty shall be calculated on the value of such money in British currency, according to the current rate of exchange on the day of the date of the instrument.

By section 52, a bill of exchange or promissory note purporting to be drawn or made out of the United Kingdom is, for the purposes of the Act, to be deemed to have been so drawn or made, although it may in fact have been drawn or made within the United Kingdom.

Where, by section 53, a bill of exchange or promissory note has been written on material bearing an impressed stamp of sufficient amount but of improper denomination, it may be stamped with the proper stamp on payment of the duty and a penalty of forty shillings if the bill or note be not then payable according to its tenor, and of ten pounds if the same be so payable.

Except as above, no bill of exchange or promissory note can be stamped with an impressed stamp after its execution. Stamp.

By the 34 and 35 Vic., cap. 74, passed 14th August, 1871, it is enacted that every bill or note payable at sight or on presentation shall bear the same stamp, and shall for all purposes whatsoever be deemed to be a bill of exchange or promissory note payable on demand. Bills at sight.

Bills and notes payable on demand may be stamped with either impressed or adhesive stamps, but inland bills and inland notes payable otherwise than on demand must be on impressed stamps. Adhesive and Impressed Stamps.

The allowance for spoiled stamps is dealt with by the Stamp Duties Management Act of 33 and 34 Vic., cap. 98, secs. 14 to 17, passed 10th August, 1870, and under it all applications for allowance must now be made within six months after the stamp has been spoiled. Formerly, residents in the country had twelve months granted them for the purpose.* Spoiled Stamps.

* The following are the terms of the sections in question :—

ALLOWANCE FOR SPOILED STAMPS.

Sec. 14. Subject to such regulations as the Commissioners may think proper to make, and to the production of such evidence, by affidavit or otherwise, as the Commissioners may require, allowance is to be made by the Commissioners for stamps spoiled in the cases hereinafter mentioned, that is to say :—

1. The stamp on any material inadvertently and undesignedly spoiled, obliterated, or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any party, and for which stamp no money or other consideration has been paid or given to the attorney, solicitor, or other person employed to transact the business intended to have been carried into execution thereby, or to the person by whom the same was written.

2. Any adhesive stamp which has never been used or affixed to any material, but which has been inadvertently and undesignedly spoiled or rendered unfit for use.

3. The stamp used, or intended to be used, for any bill of exchange or promissory note, signed by or on behalf of the drawer, or intended drawer, but not delivered out of his hands to the payee, or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued, or put in circulation, or made use of in any other manner whatever, and which, being a bill of exchange, has not been accepted by the drawee, and provided that the material on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon.

Stamp.

Effect of Bills
not being duly Stamped.

The consequences—and it is of the utmost importance to note them—of a bill or note not being duly stamped, are, as expressed by section 54 of the Stamp Act, that every person who issues, indorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty, and not being duly stamped, shall forfeit the sum of £10; and the person who takes or receives from any other person any such bill or note, not being duly stamped, either in payment or as a security, or by purchase or otherwise, *shall not be entitled*

4. The stamp used, or intended to be used, for any bill of exchange or promissory note, signed by or on behalf of the drawer thereof, but which, from any omission or error, has been spoiled or rendered useless, although the same, being a bill of exchange, may have been presented for acceptance, or accepted or indorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange or promissory note is produced, identical in every particular, except in the correction of such error or omission as aforesaid, with the spoiled bill or note.

5. The stamp used for any of the following instruments, that is to say :—
- a. The presentation to an ecclesiastical benefice not followed by institution.
 - b. An instrument executed by any party thereto, but afterwards found to be absolutely void in law from the beginning.
 - c. An instrument executed by any party thereto, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended.
 - d. An instrument executed by any party thereto, but which, by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed.
 - e. An instrument executed by any party thereto which, for want of the execution thereof by some material and necessary party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended.
 - f. An instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose.
 - g. An instrument executed by any party thereto which, for want of enrolment or registration within the time required by law, becomes null and void.
 - h. An instrument executed by any party thereto, which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped.
 - i. An instrument executed by any party thereto, which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties, and for the same purpose, is executed and duly stamped.

Provided as follows :—

1. That, in the case of an executed instrument,
 - a. The instrument is given up to be cancelled.

to recover thereon, or to make the same available for any purpose whatever. And we have seen that, with the exception provided for by section 53, ante page 94, no bill of exchange or promissory note can be stamped with an impressed stamp after its execution.

Stamp.
Effect of
Bills not being
duly Stamped.

- b. The application for relief is made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has become void for want of enrolment or registration, and in that case within six months next after it has so become void, and except also where the spoiled instrument has been sent abroad, and in that case within six months after it has been received back in any part of the United Kingdom.
- c. No action has been brought, or suit commenced, in which the instrument could or would have been given or offered in evidence.
- 2. That, in the case of stamped material not having any executed instrument written thereon, and of an adhesive stamp not affixed to any material, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

ALLOWANCE FOR MISUSED STAMPS.

Sec. 15. When any person has inadvertently used, for an instrument liable to duty, a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not liable to any duty, the Commissioners may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to any duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused.

ALLOWANCE, HOW TO BE MADE.

Sec. 16. In any case in which allowance is made for spoiled or misused stamps, the Commissioners may give, in lieu thereof, other stamps of the same denomination and value, or, if required, and they think proper, stamps of any other denomination to the same amount in value, or, at their discretion, the same value in money, deducting the proper allowance on the purchase of stamps of the like description.

STAMPS NOT WANTED MAY BE RE-PURCHASED BY THE COMMISSIONERS.

Sec. 17. When any person is possessed of a stamp which has not been spoiled, or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Commissioners may, if they in their discretion think fit, repay to him the amount or value of such stamp in money, deducting the proper discount, upon his delivering up the stamp to be cancelled, and proving to their satisfaction that it was purchased by him with a bona fide intention to use it, and that he has paid the full value thereof, without any deduction (except only the amount of such discount), and that the stamp was so purchased within the period of six months next preceding the application at the chief office, or at one of the head offices, or from some person duly appointed to sell and distribute stamps, or duly licensed to deal in stamps.

Stamp.

Duty on Bills
payable with
Interest.

In the case of bills payable with interest, the duty chargeable is only upon the principal sum, and that even if the interest be reserved from a period prior to the date of the instrument, this having been so held, under the old statutes, by *Pruessing v. Ing*, 4 B. and Ald. 204, and *Wills v. Noot*, 4 Tyr. 726, the Court, in the first of these cases, holding that the duty is meant to be imposed only on the principal sum specified in the instrument, and not on a sum compounded of principal and interest, and instancing the case of bonds, where the stamp is always regulated by the principal sum secured.

Cancellation
by Die.

Of cancellation, it has been decided, by the case of *Viale v. Michael*, Q. B. 30, L. T. 433, that an adhesive stamp may be cancelled with a stamp or die, and it would appear, from Justice Blackburn, that the cancellation may now be made in open court at any time before verdict.

Interposition
of Equity.

If a bill be, by fraud or mistake, given on unstamped paper, equity will compel it to be replaced by a valid one. *Aylett v. Bennett*, 1 Anst., 45, where a person entered into an express agreement to give a valid note, and had given one on an improper stamp, the delivery of a proper note was enforced by equity. But, of course, a court of equity cannot, any more than a court of law, enable the holder to recover on an unstamped bill or note.

Place of Date.

2. PLACE OF DATE.—The place superscribed will be presumed to be that in which the drawer resides, and if stated generally, as "London," "Edinburgh," "Dublin," which is almost invariably the practice, the instances in which the street is also mentioned being extremely rare, it will, failing more specific information as to the address, be sufficient, as will be afterwards seen in giving notice of dishonour to the drawer, to direct any communication to him also generally. Should no place be stated, the omission will not invalidate the instrument, though care should always be taken to see that it is inserted.

By 9 George IV, cap. 65, a penalty is imposed on the issue or negotiation in England of bills or notes under £5, payable to bearer on demand, made, or purporting to be made, in Scotland or Ireland. Place of Date.

3. DATE.—Care should also be taken to see that the date of the instrument is correctly inserted, though a bill undated is not invalid. Date.

Where the date is omitted, it will be fixed at the time when, on evidence, the instrument was made or issued. Omission of Date.
De la Courtier v. Bellamy, 2 Show, 422, *Giles v. Bourne*, 6 M. and S. 73. On a bill or note, observes one of the earlier standard authorities on the law of bills, importing to be payable within a limited time after the date, and not dated, the day it issued, if it can be ascertained, should be stated in the declaration, otherwise the first day the plaintiff knew, and can prove, that it existed. Bayley, in his Summary of the Law of Bills, p. 379, 5th edition.

The date expressed in the bill or note is now held Proof of Date. primâ facie evidence of the actual time of the granting or making of the instrument, except where the assignees of a bankrupt produce it as evidence of a petitioning creditor's debt, when they must show by extrinsic evidence that the instrument existed before the act of bankruptcy. *Anderson v. Weston*, 6 Bing., N. C. 296, *Wright v. Lainson*, 2 M. and W. 739.

When dated on a Sunday, Chitty states, p. 99, 10th edition, "that there is no legal objection to a bill being dated on a Sunday; and an indorsee may recover against the acceptor of a bill dated on a Sunday, when there is no evidence that the bill was accepted on that day; and it seems that, even if it was actually accepted on that day, it would be binding, *Drury v. De Fontaine*, 1 Taunt. 131, *Begbie v. Levy*, 1 Cromp. and J. 180." As there appears to be thus some doubt on the subject, it would be advisable, as a rule, not to receive bills dated on a Sunday. Dated on Sunday.

Date.
Antedating.
Post-dating.

A bill may be antedated, and it has been decided by the case of *Pasmore v. North*, 13 East, 517, that a bill may be legally post-dated. In this case the defendant drew on the 4th May a bill, dating it the 11th, for £200, payable to a third party or order at 65 days after date. On the 5th this party, the payee, indorsed the bill for a valuable consideration to the plaintiff, and on the same day died. After the 4th and before the 11th of May the defendant received effects of the payee's to the amount of about £130 to meet the bill. On the 12th he advised the drawees of the death of the payee, and desired them not to accept or pay the bill. Acceptance and payment were accordingly refused, and the drawer was sued. A verdict was found for the plaintiff, subject to the opinion of the Court of King's Bench on a case reserved. The Court, after advertizing to the 17 Geo. III, cap. 30, as to bills for less than £5 [which Act, however, is now, by 26 and 27 Vic., cap. 105, continued by 39 and 40 Vic., cap. 69, suspended, except as to notes payable to bearer on demand], and to the 48 Geo. III, cap. 149, as to post-dating drafts on bankers [by the Stamp Act, 1870, the Acts prohibiting the post-dating of cheques are repealed], held that the plaintiff was clearly entitled to recover for the whole amount of the bill, and he had judgment accordingly.

And since the abolition of the old stamp duties, under the 55 Geo. III, cap. 184, the power of post-dating bills may be thus exercised without restriction; for when the two rates of duty imposed by that Act subsisted—one, or the lesser rate, for instruments payable at not more than 2 months after date or 60 days after sight, and the other, or higher rate, for instruments payable beyond these periods—a party postponing the date of an instrument, so as to throw the payment of it beyond the 2 months or 60 days from the time of the actual drawing or issue, was, unless the instrument bore the higher rate of stamp, subjected to a penalty of £100, and the instrument was

rendered inadmissible in evidence. When thus illegally post-dated, however, it was held that such an instrument, from the amount of the stamp being regulated by the date *expressed* thereon, was available in the hands of an innocent holder.

Post-dating.

4. CURRENCY AND MATURITY.—That period of time over which a bill runs before its actual date of payment, as fixed by the instrument, is generally denoted by the term "currency," though this expression is often used to indicate the money or circulating medium of a country, and even by some authors the amount of the bill. Properly speaking, however, when used in connection with the bill, it is expressive of the time the instrument has to run; and in this sense the word will, of course, be used by us. At the beginning of the body of all properly drawn instruments, whether they be bills or notes, the currency or time of payment is invariably expressed, and in this country there is, putting out of view the bills or notes for £1 and less than £5 of the description embraced by the suspended Act of 17 Geo. III, cap. 30, no limitation legally to the time for which they may be made payable, if the period expressed be certain, or if it be a day that must arrive.

Currency and Maturity.

Length of Currency.

Thus, in the case of *Cooke v. Colehan*, Willes 393, 2 Stra. 1217, a note payable six weeks after the death of the drawer's father was held valid, the death being sure to happen; and in delivering judgment in *Colehan v. Cooke*, Willes 394, it was observed by Willes, C. J., that, "if a bill of exchange be made payable at never so distant a day, if it be a day that must come, it is no objection to the bill." And so, in the case of *Goss v. Nelson*, 1 Burr. 226, a note payable to an infant on his attaining majority, and specifying the date of that event, was held valid, as it was payable at a certain time, whether the infant should survive or not. But, in the case of *Palmer v. Pratt*, 2 Bing. 185, an order payable thirty days after the arrival of a certain

Currency and
Maturity.

Length of
Currency.

Absence of
Currency.

Usual
Currency.

After sight.

Bank Post
Bill.

ship at a certain port was held to be no bill of exchange, as it was contingent whether the ship would ever arrive.

At one time a bill, by the law of Scotland, was held to have lost its privileges if drawn at a distant term, though now the latitude allowed under the English rule would probably be recognized.

Neither is it necessary that bills or notes should express a term of payment at all, as, in the absence of such, they would be held payable on demand, for in omnibus obligationibus, in quibus dies non ponitur, praesenti die debitur.

"At sight" or "on demand," "thirty" or "sixty days after sight" or "date," or "one," "two," or "three months after date," are, however, the usual terms of payment; though, in the majority of commercial or trading inland bills, the currency which prevails is from one to three months after date. In certain trades in some of the manufacturing districts of Lancashire, Yorkshire, and Staffordshire, the currency is sometimes four months. Inland bills passing through the hands of the banker rarely exceed this latter currency, and, if they do, are in proper banking practice discounted only in very exceptional instances.

The term "after sight," in the case of a bill, means not after simple exhibition to the drawee, but after sight has been testified in a legal way, as by the drawee's acceptance, or by noting or protest for non-acceptance.

In the case of a promissory note, however, the expression at, or so many days after sight, means that it is payable at that period after presentment for sight, and it has been stated that such an instrument is "incapable of acceptance," but the promissory notes, denominated "bank post bills," of the Bank of England, granted at so many days after sight, are drawn for and bear acceptance.

By the bench, however, some doubt appears to have been expressed as to the true character of the bank post bill, some of the judges having maintained that it is a bill of exchange, whilst others held it to be a promissory

note. See *Forbes v. Marshall*, 24 L. J. And in an indictment for forgery, under the statutes 11 George IV and 1 William IV, cap. 66, it was held that a bank post bill could not be described as a bill of exchange, but that it might be described as a "bank bill of exchange." *Rex v. Birkett, R. and R.* 251. The first issue of the bank post bill appears to have been made in 1738, about the close of which year it was notified by the Bank that they were prepared, after a representation from the Postmaster-General, to give "bills payable at seven days' sight, that, in case of the mails being robbed, the proprietors might have time to give notice thereof." When intended for remittance to the country, the bank post bill is generally, for greater security, sent in its unaccepted state.

When the term "month" is used, the calendar or solar month is always understood with reference to the bill or note, and other negotiable instruments, though by both the common law and in equity it is held indicative of the lunar month, or 28 days.

Formerly, when used in the statutes, it meant a lunar month, unless calendar month was expressed; but by 13 Vic., cap. 21, 10th June, 1850, being "an Act for shortening the language used in Acts of Parliament," it is enacted by section 4, in regard to the interpretation of certain words for future Acts, that "the word 'month' shall mean calendar month, unless words be added showing lunar month to be intended."*

* The division and calculation of time by the English law are thus explained by Blackstone, in his *Commentaries*, B. 11, C. 9, S. 1:—"The space of a year is a determinate and well-known period, consisting commonly of 365 days; for though in bissextile or leap years it consists properly of 366, yet by the statute 21 Henry III the increasing day in the leap year, together with the preceding day, shall be accounted for one day only. That of a month is more ambiguous, there being in common use two ways of calculating months: either as lunar, consisting of 28 days, the supposed revolution of the moon, 13 of which make a year; or as calendar months of unequal lengths, according to the Julian division in our common almanacs, commencing at the calends of each month, whereof in a year there are only 12. A month in law is a lunar month, or 28 days, unless otherwise expressed, not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks. Therefore a lease for 'twelve months' is only for 48 weeks; but if

Currency and
Maturity.
Bank Post
Bill.

Currency and
Maturity.

Days of
Grace.

In the case of all instruments not payable on demand, three days of grace are, in the computation of the currency, added, unless the contrary be expressed as "at seven days' sight, without grace, pay," etc.; and, as will have been already observed, by 34 and 35 Vic., cap. 74, days of grace are abolished on instruments payable "at sight" or "on presentation," these being now payable on demand. The three days are reckoned exclusive of the day on which the instrument falls due, and inclusive of the last day of grace. The Bank of England, however, pays its own bills, without taking advantage of the days of grace.

If an instrument be payable by instalments, days of grace are allowed on each instalment.

Computation. A bill dated 31st January, at one month's date, will be payable on 3rd March, the number of the days of the month not being taken into account, for, if this were done, it would, of course, deprive the word "month" of all meaning. With a short succeeding month, therefore, the time is fixed in the same way as if it contained thirty-one days; so instruments dated 28th, 29th, and 30th January, at one month after date, would all mature at the same time in March, except in leap year, when the instrument dated 28th January would of course become payable on the 2nd, instead of the 3rd March.

it be for '*a twelvemonth*' in the singular number, it is good for the whole year. For herein the law recedes from its usual calculation, because the ambiguity between the two methods of computation ceases, it being generally understood that, by the space of time called thus in the singular number, a twelvemonth, is meant the whole year consisting of one solar revolution. In the space of a day all the 24 hours are usually reckoned, the law generally rejecting all fractions of a day in order to avoid disputes. Therefore, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences."

On this last point, however, it will be afterwards seen that, in the case of bills made payable at a bank, the payment, to avoid the expense of noting or protest, must be made within banking hours. And, indeed, of the obligation generally of the acceptor of a bill or maker of a note to pay on the day of maturity, it is now established that his contract is to pay on demand upon any portion of that day, within business hours, and if, on such demand, payment is not made, the contract is thereupon considered broken, and the creditor or holder of the instrument at liberty to at once give notice of its dishonour, and recur upon the previous obligants.

Sometimes the bill is expressed payable at three or so many other weeks after date. In the former instance, or if at three weeks, this would be equivalent to twenty-one days after date, a week being always seven days, and, with the three days of grace, would be payable on the twenty-fourth day.

As a rule, bills having more than three months to run should not be discounted, as the operations of ordinary or legitimate business do not warrant, except in one or two exceptional trades, a more extended currency. And it is of great consequence to bankers that their discounts should always be effected on short currencies, as by this means one of their main resources is kept well in hand, and, moreover, less opportunity is given for traffickers to enter into undue speculation ; and, to still better secure legitimate trading, discounts should be limited to amounts fairly commensurate to the trade of the account-holder.

Usance, and the old and new styles of computing time, will be considered in a subsequent part of this volume, under the title "Usance, and Old and New Style."

And it may be added that, if a bill or note falls due on Sunday, Christmas Day, Good Friday, or on a day appointed by proclamation for a fast or thanksgiving, it is payable on the preceding day. If it falls due on a Bank Holiday, it is payable on the following day.

By the Bank Holidays Act, 1871, 34 Vic., cap. 17, the following are Bank holidays :—

In England and Ireland : Easter Monday, the Monday in Whitsun-week, the first Monday in August, and the 26th December, if a week day ; if Sunday, then the 27th.*

* By section 2 of the Holidays Extension and Amendment Act, 1875, 38 Vic., cap. 13, being "An Act to extend to the Docks, Custom Houses, Inland Revenue Offices, and Bonding Warehouses, in England and Ireland, certain provisions of the Bank Holidays Act, 1871, and to amend the same," it is enacted that "Whenever the 26th day of December shall fall on a Sunday, the Monday immediately next following, that is to say, the 27th day of December, shall be a holiday under this Act, and also under the Holidays Act of 1871."

Currency and
Maturity.
Holidays, &c.

And in Scotland: New Year's Day, Christmas Day, or the next Monday if either of these days falls on a Sunday; Good Friday, the first Monday of May, and the first Monday of August.

Request to
Pay, and
Payee.

5. REQUEST TO PAY, AND PAYEE.—Following the currency is the request to pay, and the name or description of the payee. The request to pay, both in the inland and foreign bill, is and must be absolute, except, of course, when the instrument is drawn in sets, when there is the necessary qualification in each part that it shall be only payable in the event of the others not being paid. The word "pay" is not indispensable, as the expressions "deliver" and "credit in cash" would be held equivalent and sufficient. *Morris v. Lea, Lord Raym.* 1397; *Ellison v. Collingridge*, 19 L. J., 268 C. P.

Payee.

When the instrument is made payable to a third party, it is customary to give merely the name, without the address or designation, though in some instances it would be prudent to be more particular and specific in the description. Thus, where a bill drawn, payable to one "Henry Davies," got into the hands of another Henry Davies, and was indorsed by him to the plaintiff, it was held, in an action against the acceptor, that the indorsement of his own name by Henry Davies was a forgery, and that, consequently, no title could be conveyed to the plaintiff. *Mead v. Young*, 4 T. R., 28. And where father and son have the same name, a bill payable in such name will be held, unless the contrary appear, to belong to the father, though possession and indorsement on the part of the son would be evidence that he, and not the father, was payee. *Sweeting v. Fowler*, 1 Stark. 106. *Stebbing v. Spicer*, 19 L. J., 24.

Error in
Name.

If the name be spelled wrong, as where, in the case of *Willis v. Barrett*, 2 Stark. 29, "Elizabeth Willison" had been written in mistake for "Elizabeth Willis," verbal evidence is admissible to show who was intended.

It will be superfluous to add, however, that, in proper banking practice, instruments varying even by a letter in the names, when presented for discount or retirement, are invariably rejected, or refused payment.*

A bill may be payable to the order of the drawee himself if he act in two different capacities, as where he accepts as agent, and being also in business for himself, the bill is made payable on his own account. *Holdsworth v. Hunter*, 10 B. and C. 449.

It is not essential that the payee should be described by his name, for he may be described by his office merely or in his public capacity, as trustee of a will or manager of a bank, though it has been held that a note payable to the secretary for the time being of a company, or to the person who should be secretary, on maturity of the instrument, is a note payable on a contingency, and therefore void. *Megginson v. Harper*, 4 Tyr. 96. *Robertson v. Sheward*, 1 Man. and Gran. 511. *Storm v. Sterling*, 23 L. T. 187, Q.B.

Should an error be made in the designation of the character of the payee, this will be esteemed immaterial, provided the identity of the party be clear; as in the case of *Rex v. Box*, 6 Taunt. 325, where a note payable in the names of certain ladies, who were also described as stewardesses of a society, was held good, they, though having no legal right to the character, being generally known by the description thus given them.

* The word "retirement" in the above passage is used in the sense of payment—its ordinary acceptation. There has been discussion by the Bench as to the proper meaning of the word "retire." In the case of *Elsam and another v. Denny and another*, 12th June, 1854, Lord Chief Justice Jervis said that the word "retire," in reference to a bill of exchange, "is susceptible of various meanings, according as it is applied to various circumstances. If an acceptor retires a bill at maturity, he takes it entirely from circulation, and the bill is in effect paid; but, if an indorser retires it, he merely withdraws it from circulation in so far as he himself is concerned, and may hold the bill with the same remedies as he would have had, had he been called upon in due course and had paid the amount to his immediate indorsee. We think this is the ordinary meaning of the word 'retire.'"

In a later case, however—that of *ex parte Reed and Steel in re Tweddell*, 22nd April, 1872—Sir James Bacon, Chief Judge in Bankruptcy, said that "retiring a bill of exchange means, as I understand it, so to deal with it as that the man who is personally liable shall not be sued upon it, which he might be unless it is retired before the time at which it could be noted."

Payee.
Alternative,
&c.
Payee.

A bill payable to "A. or order," or to "the order of A.," is payable to A. himself as well as to his order; but alternative words as to the party himself, as pay to "A. or B.," will invalidate the bill, there being in such a case an uncertainty or a condition inconsistent with the nature of the instrument. If a bill be payable to A. or order "for the use of B." or "in trust for B.," A. is deemed the payee, and can alone transfer, B. having merely an equitable and not a legal interest. Anon. Comb. 401, Blanckenhagen and another *v.* Blundell, 2 B. and Ald. 417, and Evans *v.* Cramlington, Carth. 5.*

Payable to
Bearer, &c.

Besides being made payable to a third party, the bill may be made payable to the order of the drawer himself, as well as in a general manner "to bearer." When payable to bearer or to a person with these words in addition, the bill may be negotiated by mere delivery. And the name of the payee need not be that of a person, as where an instrument was made payable to "Ship Fortune or bearer," it was held good as being payable to bearer simply, without indorsement. Grant *v.* Vaughan, 3 Burr. 1516, a case, it may be added, which first fully established that bills made payable to bearer were negotiable, a point upon which there was previously some doubt.

Deceased
Payee.

If a bill be made payable to a deceased person, in ignorance of his death, it is equivalent to being made payable to his personal representatives. Murray *v.* East India Company, 5 B. and Ald. 204.

Fictitious
Payee.

A bill drawn payable to a fictitious payee, and indorsed by the drawer in such name, will, as against the drawer and

* Blanckenhagen and another *v.* Blundell, 28th April, 1819, was an action upon a promissory note, payable to J. P. Damer or to the plaintiffs, and in delivering judgment, Bailey, J., said: "If there had been any community of interest stated between the payees so as in any respect to identify Damer and Blanckenhagen, it is possible that an action might have been maintained on this note; but, in the way in which the declaration has been framed, stating this as a note payable to one or the other, I am very clearly of opinion that it is not that description of note which the statute of Anne contemplated."

And it was stated in argument that a bill of exchange in this form would not be negotiable by the lex Mercatoria, Carlos *v.* Fancourt, 5 T. R. 482, and Hill *v.* Halford, 2 Bos. and Pull. 413, being cited as authorities in point.

also as against the acceptor, if he be aware of the fraud, be considered in the hands of an innocent holder as payable to bearer. Vide *Minet v. Gibson*, 3 T. R. 481, 1 H. B. 569, and *Bennet v. Farnell*, 1 Camp. 130, to which latter case there is a note in the following terms: "Almost all the modern cases upon this question arose out of the bankruptcy of Livesay and Company and Gibson and Company, who negotiated bills with fictitious names upon them to the amount of nearly a million sterling a year. The first case was *Tatlock v. Harris*, 3 T. R. 174, in which the Court of King's Bench held that the bona fide holder, for a valuable consideration, of a bill drawn payable to a fictitious person, and indorsed in that name by the drawer, might recover the amount of it in an action against the acceptor for money paid or money had and received, upon the idea that there was an appropriation of so much money to be paid to the person who should become the holder of the bill. In *Vere v. Lewis*, 3 T. R. 182, decided the same day, the Court held there was no occasion to prove that the defendant had received any value for the bill, as the mere circumstance of his acceptance was sufficient evidence of this; and three of the judges thought the plaintiff might recover on a count which stated that the bill was drawn payable to bearer. *Minet v. Gibson*, 3 T. R. 481, put this point directly in issue, and the unanimous opinion of the Court was, that where the circumstance of the payee being a fictitious person is known to the acceptor, the bill is in effect payable to bearer. Soon after, the Court of Common Pleas laid down the same doctrine in *Collis v. Emett*, 1 H. Bl. 313. This decision was acquiesced in; but *Minet v. Gibson* was carried up to the House of Lords, 1 H. Bl. 569. The opinion of the judges being then taken, Eyre, C. B. (p. 618), and Heath, J. (p. 619), were for reversing the judgment of the Court below, and Lord Thurlow, C., coincided with them (p. 625); but, the other judges thinking otherwise, judgment was affirmed. Parl. Cas., 8vo., ii, 48.

Payee.
Fictitious
Payee.

Payable in
Blank.

The last case upon the subject reported is *Gibson v. Hunter*, 2 H. Bl. 187, 288, which came before the House of Peers upon a demurrer to evidence, and in which it was held that in an action on a bill of this sort against the acceptor to show that he was aware of the payee being fictitious, evidence is admissible of the circumstances under which he had accepted other bills payable to fictitious persons. Vide *Tuft's case, Leach Cro. Law, 159.*"

According to the opinion of the majority of the judges in the above case of *Minet v. Gibson*, 1 H. Bl. 608, a bill not made payable to any payee in particular, or to the drawer's order, or to bearer in general, is payable to the bearer; but *Eyre, C. B.*, in dissenting, said that such an instrument was mere waste paper. And in support of this there has been quoted the case of *Rex v. Randall, R. and R., C. C. 195*, where, with regard to an instrument drawn payable to blank or order, it was held that the name of the payee was essential; but in this case, it may be observed, the person who was convicted of forging the bill had been recommended a pardon on the ground that the bill was not a complete instrument. And it is now established, with regard to a blank space left for the payee's name in a bill which has been negotiated, that a bona fide holder may insert his own name and recover against the drawer, though to entitle him to recover against the acceptor he must prove that he had authority from the drawer to insert his name as payee. *Crutchley v. Clarence*, 2 M. and S. 90, *Crutchley v. Mann*, 5 Taunt. 529. And we shall afterwards see, from the case of *Attwood v. Griffin, R. and M. 425*, referred to in our consideration of the effect under the stamp laws of alterations and additions made on the instrument, that a holder thus inserting his name does not render a fresh stamp necessary. It might perhaps, however, be questioned whether a bona fide holder, in thus filling up the blank after the instrument has been issued, had not an implied authority to do so from the drawer, and whether the

drawer's signature was not of itself a sufficient mandate to the drawee to accept and pay an instrument so completed by the holder.

Payee.
Payable in
Blank.

6. TRANSFERABLE WORDS.—We are now brought to the next point in the construction of the bill, the transferable words, "or order," without which or the more general term "bearer" the instrument is in England not negotiable, and at one time, indeed, it was thought that when these words were not introduced the instrument would have no greater effect than that of being mere evidence of a contract. It is now, however, well established that both the bill and note, without operative words of transfer, are not only perfectly valid as between the original parties, the bill, indeed, when first in use being drawn payable without these words, but also, as we shall see in treating of the indorsement, that if the payee should, notwithstanding, transfer a bill not having such words, he is still chargeable upon it at the suit of *his endorsee*. In the event of the transferable words being omitted by mistake, it having been the original intention of the parties to render the instrument negotiable, the words may be subsequently supplied without invalidating the instrument either at common law or under the Stamp Acts. *Kershaw v. Cox*, 3 Esp. 246, in which case the defendant, who was the payee, had indorsed the bill to another person, by whom it was passed to the plaintiffs, who, on discovering that the words "or order" were omitted, returned the instrument the day after it was drawn, and the drawer inserted them with the consent of the payee. It was held that no new stamp was necessary, that it was not a new instrument, but merely a correction of a mistake and in furtherance of the original intention of the parties, and the plaintiffs had a verdict. Afterwards a new trial was moved for, but a rule was refused by the Court. In a subsequent case, that of *Knill v. Williams*, 10 East, 437, it was observed by the judge that *Kershaw v. Cox* could only be supported on the ground that the alteration was merely

Transferable
Words.

Transferable
Words.

the correction of a mistake, for the alteration was a very material one.

When the instrument is drawn payable to order, it is only transferable in the first instance by indorsement; but if made payable to bearer, it is, as we have already seen, transferable by mere delivery.

Domicile.

7. DOMICILE.—Following the words of transfer, there is expressed the domicile or place of payment of the instrument, when such is named by the drawer, for he is at liberty to either indicate it or not, as he chooses.

And it would appear that the instrument may be drawn, payable at an alternative place of payment, Pollard *v.* Herries, 3 Bos. and Pull., 335, in which case a successful action was maintained on a note at 7 days' sight, made at Paris and presented in London, and expressed payable in these terms: "Payable as above in Paris, or, at the choice of the bearer, at the Union Bank in Dover, or at my usual residence in London, according to the course of exchange upon Paris."

It has been held that a bill expressed by the drawer as payable at his own house is evidence that it is drawn for his accommodation, and that he intends providing for it, unless he can show that he really had effects in the hands of the drawee. Sharp *v.* Bailey, 9 B. and C., 44, 4 M. and R., 4 S. C.

In England, it is now very generally the custom to domicile the instrument in London, as well for greater convenience in its collection as for the furtherance of its negotiation. The bill may be thus domiciled, though the acceptor has no account in London, and, indeed, whether he has, or has not, a banking account at all, as, through the intervention of the banker in his town, he may retire an instrument so accepted, or accepted payable at any other town distant from his residence or place of business, and that upon even a single day's notice previous to its maturity, though several days are in general practice allowed in such

cases to the banker. And on this point indeed, and to secure sufficient time in all instances, it is not unusual for the banker to exact from his constituents a period of three days' premonition, an interval which appears calculated to suit the ordinary convenience of all parties.

In cases where the acceptances are numerous, a list of those falling due during the month is generally furnished at the beginning of the month by the client, a practice almost necessary for the guidance of his banker, particularly when the amounts are considerable. When this practice is followed, it is understood that the banker has three days allowed for advice, or, in other words, is entitled to debit the party with the amount three days before the date of maturity of the acceptance. Of course, the banker may at his discretion, and as he generally does when the nature and working of the account permit, at once debit his client with the full amount or whole series of the acceptances, interest for the time which intervenes between the date of the charge, and the maturity of the instruments being, with the exception of the three days, allowed upon the account.

In the negotiation of the bill by the banker, it may be observed, it is only those which are made payable in London that he circulates, all those having a different domicile being allowed to lie quietly in his bill-case until the period arrives for their collection.

Instead of the place of payment being mentioned in the body of the bill as above, we have observed in a good many instances its introduction, at the foot of the instrument, as under the drawee's address, and expressed in these terms: "Payable in London." This practice, however, is objectionable, and should be discountenanced by the banker, as it is doubtful whether, to be legally effectual, the requisition should not form part of the body of the instrument. And vide post, as to the promissory note.

Domicile.

The legal effect of domiciliation will be seen under the head of acceptance.

Amount.

8. AMOUNT.—The bill must not only be for the payment of money, and of money only, but it must be for a sum certain, definite, and unconditional. Thus, with regard to money, an instrument drawn for an amount payable "in good East India bonds" is invalid as a bill or note, Bul., N. P. 272; and it has been held, *ex parte Imeson*, 2 Rose, 225, that a note expressed to be payable in "cash or Bank of England notes" is null, under the statutes of Anne, though now an instrument so payable might perhaps be deemed valid under the 3 and 4 William, 4 C., 98, by section 6 of which Act the notes of the Bank of England are declared to be a legal tender.* And so instruments for the payment of money, jointly with the performance of some act, or in the alternative, as in the case of one given for the delivering up of a wharf and the payment of money on a particular day, and of another for the payment of money, or the surrender of a certain person to prison, are invalid as bills or notes, *Martin v. Chauntry*, 2 Stra., 1271, *Smith v. Boheme*, 3 Lord Raym. 67; and an instrument drawn

Money.

Certain.

* While preserving its character as a legal tender, the Bank of England note may be viewed as equivalent to cash or money in specie, whatever bearing the circumstance of the contingency involved in its not continuing a legal tender may have upon the question. The following are the terms of the above enactment:—"That, from and after the 1st August, 1834, unless and until Parliament shall otherwise direct, a tender of a note or notes of the Governor and Company of the Bank of England, expressed to be payable to bearer on demand, shall be a legal tender to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount for all sums above £5, on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay on demand their said notes in legal coin, provided always that no such note or notes shall be deemed a legal tender of payment by the Governor and Company of the Bank of England, or any branch bank of the said Governor and Company; but the said Governor and Company are not to become liable, or be required to pay and satisfy at any branch bank of the said Governor and Company any note or notes of the said Governor and Company not made specially payable at such branch bank; but the said Governor and Company shall be liable to pay and satisfy at the Bank of England, in London, all notes of the said Governor and Company, or of any branch thereof." In *ex parte Imeson*, *supra*, the Court held that the instrument payable in Bank of England notes was not a promissory note within the statutes of Anne, because a delivery of bank notes, which might be of less value than cash, would satisfy it, and it was not absolutely, and, at all events, for payment of money in specie.

for an amount with interest, and "with all other sums that may be due," is no bill, not even for the amount named, Smith *v.* Nightingale, 2 Stark., 375, Lord Ellenborough in this case holding that the instrument, which was a promissory note, was too indefinite, and that, since the whole constituted an entire promise, it could not be divided into parts.

Nor must the amount payable be subject to indefinite or contingent deductions, as, where a note was granted for a specific sum to the representatives of a certain person under deduction of any interest or money that might be due by this person to the maker, it was held invalid as a promissory note. Barlow *v.* Broadhurst, 4 Moore, 471. An instrument made payable out of a particular fund is invalid, as, where one was drawn for £7 per month, payable out of the drawer's "growing subsistence," it was held no bill, on the ground that it would not have been payable had the drawer died, or his subsistence been taken away. Jocelyn *v.* Laserre, Fort. 281. And so an instrument, payable for an amount out of certain money when received, was held no bill, as it was payable out of a particular fund, and on an event which was future and contingent, "whereas," as was observed by the Court, "a bill ought to be subject to no event or contingency except the failure of the general personal credit of the person drawing or negotiating it." Dawkes *v.* Lord de Lorraine, 2 Bla. Rep. 782.

The statement of a particular fund, however, by way of mere direction how the drawee should reimburse himself, will not vitiate a bill. Thus, where the drawee was directed to pay a certain sum "as my quarterly half-pay," the instrument was held to be a good bill. Macleod *v.* Snee, Lord Raym. 1481. Further, in illustration of the necessity of the bill being payable for a sum absolute and unconditional, it has been held that an order to pay money, "provided the terms mentioned in certain letters written by the drawer were complied with," was held as no bill. Kingston

Amount.

Absolute and
Uncondi-
tional.

Amount.
Absolute and
Uncondi-
tional.

v. Long, Bayley, 5th ed. 16. And a note granted for a specified sum, payable with the provision that a certain person "leaves either of us sufficient to pay that said sum, or if we otherwise shall be able to pay it," was held invalid—Roberts *v.* Peake, 1 Burr., 323—as was also a note promising to pay a sum out of the maker's money that should arise from his reversion, and in which case, Carlos *v.* Fancourt, 5 T. R., 482, it was observed by Lord Kenyon that "it would perplex commercial transactions if paper securities of this kind were issued into the world, incumbered with conditions and contingencies, and if the persons to whom they were offered in negotiation were obliged to inquire when these uncertain events would probably be reduced to a certainty."

The instrument will not become valid should any subsequent occurrence render the payment no longer contingent. Colehan *v.* Cooke, Willes 399, Carlos *v.* Fancourt, 5 T. R., 482.

If the instrument be defective as a bill or note, it may, however, in some instances, be evidence of an agreement.

Instalments.

A bill or note may be made payable by instalments, and may provide that, on default in payment of one of them, the whole shall become due. Cooke *v.* Horn, Q. B. 29, L. T. 369, where a note of 25th April, 1872, for £170, with interest at 5 per cent., was payable by a first payment of £40, or more, on 1st February, 1873, and £5 on the first day of each month following, until the note and interest should be fully satisfied, and that, on default of payment of any of the instalments, the full amount then remaining due was to be forthwith payable, held that this was a valid promissory note.

Interest.

When the instrument is payable with interest, the interest runs from its date, and not from the date of its maturity—Doman *v.* Dibdin, 1 R. and M. 381, and other cases—and 5 per cent. is in practice the understood rate, if no rate be expressed by the instrument.

The amount, besides being written in words at full length in the body of the bill, is also, in all properly and regularly drawn instruments, superscribed in figures in the left corner, this being done, it has been said, chiefly to assist the eye—a matter of no trivial consideration to the banker, to whom, indeed, the practice is not only useful and convenient, but absolutely necessary, in his more elaborate and laborious operations with the instrument, particularly at the periodical balances. Should there be a discrepancy between the amount superscribed and that in the body of the instrument, the latter will be taken, *primâ facie*, to be the amount payable; and it may, perhaps, be not uninteresting to the London banker to know that, by one authority, it is laid down that the amount in words should be followed even if the letter of advice should agree with the figures.*

On the other hand, should the description of the sum in the body be imperfect, as in the omission of the word "pounds," it has been held that the superscription will adequately supply such an omission. Elliot's case, 2 East, P. C. 951, where the word "fifty" in the body of the instrument was written without the word pounds, but the judges on a case reserved, all agreed that the "£" in the margin removed every doubt, and showed that the fifty in the body of the instrument was intended for pounds. It will be thus observed that the superscription fulfils more than one important function, and that it also amounts to something more than a "mere memorandum," as ascribed to it by some recent writers. A simple inaccuracy, or an obvious slip in the statement of the amount, will not affect

* "It is usual, in bills of exchange," says the authority in question, the earliest of the Scottish writers upon the law of bills, "to write the sum to be paid in figures at the top of the bill, and in the body of it in words at length. But if it should happen the sum in figures to differ from that expressed at length, the sum in the body of the bill is to be the rule, even though the first agree with the letter of advice. Because, over and above that, a man is more apt to mistake in writing a figure than in writing a word, the figures at the top of the bill do only, as it were, serve for the contents, whereas the words at length in the body of it are mainly to be considered as an essential part."—A Methodical Treatise concerning Bills of Exchange, by William Forbes, advocate, ed. 1703, p. 42.

Amount.
Superscription.

"Sterling."

Bills under
£1.

Value
Received.

Meaning.

the validity of the instrument ; thus an order or promise to pay so many "pound," instead of "pounds," is a good bill or note. And a bill for "twenty-five, seventeen shillings, and threepence" is a bill for £25 17s. 3d. *Rex v. Post, Pasch.* 1806, Bayley, 5th ed. 11, *Phipps v. Tanner*, 5 C. and P., 488. At one time it was not unusual to add, after the amount, the words "lawful money of the realm," or the term "sterling," or some other equivalent words, to denote English money, but now this practice is rarely, if at all, observed in connection with the bill.*

Under 48 George III, cap. 88, negotiable bills drawn for less than twenty shillings are illegal, and a penalty is imposed for issuing or negotiating them.

9. VALUE RECEIVED.—Following the amount, and terminating the body of the bill, are the words, "value received." These words may be said to be universally used in the inland bill, though it is now well established that they are not essential to its validity, as value received is always implied, both in respect of granting and indorsing, as much as if it were expressed in *totidem verbis* on the instrument. *Grant v. Da Costa*, 3 M and F., 352, *White v. Ledwich*, Bayley 40.

The proper meaning of the words appears to be that value has been given by the drawer to the drawee as in

* "It is said," observes Chitty, in his Treatise on Bills, 8th ed. 153, "that it is not necessary that the money should be that current in the place of payment, or where the bill is drawn ; it may be in the money of any country whatever. When the word 'sterling,' or lawful money of Great Britain, or some words equivalent, have been used, English money and currency is in general meant. There was not any lawful money of Ireland, excepting copper, appropriated to that country—it was merely conventional ; there is neither gold nor silver coin of legal currency ; there is no such thing as Irish money, it is Irish currency. But by a recent Act (6 George, 4 C., 79) all distinction as to currency between England and Ireland has been determined." Formerly, and in Forbes' time, bills from Scotland upon London were always payable either in "Scots" or "sterling" money, "the first bearing the unalterable proportion of a twelfth part to the other." Forbes' Treatise, p. 43. Prior to, and even for a considerable time after the Union, money, when mentioned in public or judicial proceedings in Scotland, was understood to be Scots money, unless the contrary was expressed. The Scots money ranged from a doyt or penny, the one-twelfth part of a penny sterling, up to a pound, or 1s. 8d. sterling—the Scots shilling, of course, being equivalent to a penny sterling.

goods supplied, or consideration through a payee, the drawee being always debtor in some shape, though in the case of *Grant v. Da Costa*, supra, where the bill was drawn payable to the order of a third person, it was held by the Court that the meaning of the words on such a bill was that value had been received by the drawer from the payee, Lord Ellenborough having observed, "It appears to me that 'value received' is capable of two interpretations, but the more natural one is, that the party who draws the bill should inform the drawee of a fact which he does not know, than one of which he must be well aware. The words 'value received' are not at all material; they might be wholly omitted in the declaration, and there are several cases to that effect. The meaning of them here is, that the drawer informs the drawee that he draws upon him in favour of the payee, because he has received value of such payee. To tell him that he draws upon him because he, the drawee, has value in his hands, is to tell him nothing; therefore, the first is the more probable interpretation."

On the following grounds, the retention of the words in all cases in the bill or note is recommended by Chitty: Retention of the words.

"To entitle the holder," he says, 8th ed. 183, "of an inland bill or note, for the payment of £20 or upwards, to recover interest and damages against the drawer and indorser in default of acceptance or payment, it should contain the words 'value received.' And if a bill or note contain those words, an action of debt may be sustained by the payee against the maker of each." And in a late case, Abbott, C. J., said, "I agree that when a note is expressed to be 'value received,' that raises a presumption of a legal consideration to sustain the promise, though that is only a presumption which may be rebutted. So, when a sufficient value is expressed on the face of a bill or note, it has been doubted whether the acceptor or maker can give evidence that the consideration was different, unless such evidence tends to establish fraud or illegality."

Value
Received.
Retention of
the words.

But we shall afterwards see, in treating of the dishonour of the bill for non-acceptance and non-payment, that in regard to the first of the points alluded to, it has been held that interest and damages may be recovered on the bill without the necessity of protest, the latter right being first given by the statutes in question on inland bills expressed to be for value received, and that with regard to the action of debt, it is now established by *Hatch v. Trayes*, and *Watson v. Kightly*, 11 Ad. and E. 702, 3 Per. and Dav. 408, S.C., that an action of debt will lie although the bill should not contain the words "value received." See *Byles* on the subject, 6th ed. 63.

And it may be observed that, in the case of a lost bill, the 9 and 10 William III, cap. 17, provides that a duplicate may be demanded if the bill, amongst other requisites, be expressed to be for value received; but, as will be hereafter seen, full relief is obtainable in Equity, and now also at Law, not only on bills within the statute, but upon all other descriptions of the instrument, whether bill or note.

Nature of Consideration. The statement of the nature of the consideration may be made as "value received in wine," or "value received in coals," and, indeed, at one time, by the 3 Geo. II, cap. 26, known as the "Coal Act," it was enjoined that all notes given for coals in vessels in the port of London should bear to be expressed for "value received in coals," the omission of which entailed a penalty of £100 upon the buyer of the coals and the master of the vessel respectively. The omission, however, did not render the instrument void. This Act was repealed by the 47 Geo. III, cap. 68. Although, however, the specific statement of the consideration, or the words "value received" only, are now immaterial in the bill, we shall afterwards see that any alteration made in the statement of the consideration will be such a material change as will invalidate the instrument.

When the words "value received" are used, extrinsic evidence is admissible between immediate parties to prove

want of consideration; but, by the case of *Ridout v. Bristow*, 1 Cr. and J., 231, it was held that if the nature of the consideration be expressly stated on the instrument, this will not be allowed to be contradicted. Value Received. Nature of Consideration.

The consideration must not be future or executory, for then the instrument would be conditional, and consequently invalid. *Drury v. Macaulay*, 16 M. and W., 146.

As a guide to the banker in his dealings with the bill, it is often of great importance that the nature of the consideration should be known to him, and he should always, when practicable, see that it is duly expressed in the instrument.

10. SIGNATURES.—If a person sign a blank bill, he will be chargeable for any sum afterwards inserted, which may be covered by the stamp. Signatures. Blank.

If a person is induced, without negligence on his part, by fraud, to sign, his signature will not be binding, even with an innocent holder. *Foster v. Mackinnon*, 4 L. R. C. P. 704, and no title can be derived through an unauthorized or a forged signature. Fraud. Forged.

A signature in pencil has been held sufficient. *Geary v. Physic*, 5 B. and C. 234, 7 Dow. and R. 653; but there are doubts as to the sufficiency of a lithographed signature or signature by stamp. In pencil, &c.

A signature by mark is valid, but it should be witnessed, to avoid the necessity of future collateral evidence as to the authenticity of the signature and the identity of the bill. By Mark.

If a party to a bill authorize another to sign for him, the agent or mandatory may either merely sign his principal's name or, as is more correctly and most usually done, subscribe his own name "for" or "per procuration" of the principal.* By Agent.

* Persons incapable of contracting on their own account may act as agents, as in the latter capacity they are esteemed mere instruments. Thus infants and married women may become agents. An infant, however, though he may be a private, cannot be a public attorney or an attorney at law to conduct suits. *Mirror*, cap. 2, section 21; *Co. Litt.* 128A. It is said that alien enemies and persons attainted or outlawed may also be agents, though it appears inconsistent that persons excluded from the benefits and protection of the law should have the power to exercise the rights of a legally recognized office.

Signatures.
By Agent.

A party, however, before receiving a bill signed by an agent, should be certain that he has the requisite authority to sign. This may be either by formal power of attorney, or he may derive his power from some general or implied authority, as use and wont in drawing, accepting, or indorsing for the principal. Subsequent assent by the principal is equivalent to previous authority. Special authorities are construed strictly, and the expression "per procuration," or its abbreviation "per pro.," is an express intimation of a special and limited authority, the person taking a bill so drawn, accepted, or indorsed, being bound to inquire into the extent of the authority. Alexander *v.* McKenzie, 6 C. B. 766. The authority of an agent will be presumed to subsist until its formal revocation by the principal, and this is accomplished as to strangers by notice in the *Gazette*, and as to correspondents by individual communication. See Newsome *v.* Coles, 2 Camp. 617. If a person sign as agent without authority, though he may not be liable as acceptor, he is liable to a special action for a false representation. Polhill *v.* Walter, 3 B. and Ad. 114.

By Bank
Officers.

In the case of bank officers, the Act of 5th September, 1844, for regulating Joint-Stock Banks in England, 7 and 8 Vic., cap. 113, after providing, by section 22, that bills and other instruments are to be signed by particular officers on behalf of the Bank, enacts that nothing therein contained shall be deemed to make any such officers liable upon bills or notes to any greater extent, or in a different manner, than upon any other contract signed by them on behalf of the Bank; and that such Bank shall be liable thereon as fully as if its common seal had been affixed.

Government
Agents.

Agents contracting on behalf of Government may subscribe without describing themselves as agents.

Delegation of
Authority.

Unless expressly authorized, an agent or mandatory cannot delegate his authority to another. An authority to indorse, however, may imply an authority to indorse by the hand of another in the agent's presence. Lord *v.* Hall, 9 L. J., 147.

If a company, formed under the Companies Acts 1862 and 1867, has authority to sign, it is held to have made, accepted, or indorsed a bill which is "made, accepted, or indorsed in the name of the company, or made, accepted, or indorsed by, or on behalf of, the company, by any person acting under the authority of the Company." 25 and 26 Vic., cap. 89, s. 47. Of a bill directed to a limited company, whose directors were authorised to accept bills, accepted thus, "Accepted payable at, etc., C. and M., directors" of the company, and countersigned by its secretary, it was held, in an action against C. and M. personally, that the acceptance complied with the requirements of the Act, and bound the company. *Okell v. Charles and another*, 34 L. T., 822.

Signatures.
Joint-Stock
Companies.

On a promissory note in these terms, "We, the Directors of the Isle of Man Slate and Flag Company Limited, do promise to pay to J. Dutton the sum of £1,600, with interest, for value received. Richard J. Marsh, chairman; Joseph Higgins, Samuel Broadbent, Henry Johnson," and to which the company's seal was attached, and the words written against it, "Witnessed by Leslie Lockhart," the directors were held by the Court as personally liable. *Dutton v. Marsh and others*, 6, 8, May 1871, L. R., 6 Q. B., 361, 40 L. J., Q. B. 175, 24 L. T., N. S. 470, W. R. 19, Q. B. 754.*

* Chief Justice Cockburn, in delivering judgment, 8th May, 1871, in this important case, said: "This was a case heard on Saturday, before myself, sitting with my brothers Blackburn and Hannen. A promissory note was made by the defendants, who describe themselves therein as the directors of a certain joint-stock company, and one of the defendants expressly signs it in the character of chairman; and although they did not in terms profess thereby to act as the mere agents of the company, they did affix thereto the corporate seal of this association, and the question for us was, whether this promissory note was binding upon the individuals who signed it, or was binding only upon the association of which they were the directors. Now we have arrived at the conclusion, though not without some doubt, that this rule must be discharged. At first we were disposed to think that the defendants had sufficiently indicated the character in which they had signed this document by their description of themselves in the body, and by the affixing of the seal of their company at the foot, to fix the company itself with the liability and relieve themselves; but, on a review of all the cases, we find the general effect of the authorities to be this: Suppose the seal of the company did not appear to this instrument, but

Signatures.
Liquidators.

If the company be in liquidation, two liquidators must sign, in order to bind the company. *Re London and Mediterranean Bank, ex parte Agra and Masterman's Bank, L. J. 486*, where four liquidators passed a resolution that bills to be accepted on behalf of the company should be accepted by one liquidator and the manager. Three bills so accepted were discounted by A., who afterwards sought to prove upon them in the winding up. Held that the bills were not duly accepted under section 133 of the Companies Act, 1862, and that they were not binding upon the company. The proof was therefore rejected.

Even if, under any circumstances (as was said in *re the London and Mediterranean Bank, 16 W. R., 1,003, L. R. 3, Ch. 651*), bills not accepted by two liquidators would have been binding on the company, it could only be so in a case where nothing but a purely ministerial act was left to be done by the person who actually accepted the bills. But it could not be so in a case where a great deal was left to the discretion of the person who actually accepted the bills.

the parties to it are on the face of it described as directors if they do not state expressly that in signing they sign on behalf of the company of which they are directors, they would be individually liable; but if, on the contrary, they state that they are acting on behalf of some company, then, according to *Lindus v. Melrose*, they do not render themselves personally liable. If, then, in this case, it had stood that they, as directors of the company, and simply describing themselves as such, borrowed this money and signed this note, they would undoubtedly have been personally liable upon it. The case was, however, complicated, and for a moment rendered doubtful to my mind, by the effect of the presence of the corporate seal of the company on the security so given by the defendants, and I had to consider whether the affixing the seal was not equivalent to a declaration by the defendants that they signed only as directors, and solely on behalf of the company, and not on behalf of themselves; but, on consideration, I agree with my learned brothers that that effect cannot be given to that act. I have come to the conclusion that the plaintiffs are right in their contention that the description as directors, and the presence of the seal, do not exclude the inference that the jury might very fairly be left to draw that the defendants intended, by signing this document, to hold themselves out to the plaintiff as personally responsible. We take it, then, that the plaintiff is justified in arguing that these elements only evidence the intended application of the money as between the directors and the shareholders. There is no case which goes to the length of saying that a mere affixing the seal of a company is necessarily to exclude the presumption of personal responsibility, and, if this be so, the verdict here was justified, and this rule must, therefore, be discharged. My brother Hannen is not now present, but I have his authority for stating that this judgment has his entire concurrence." Mellor, J., concurred.

Professional, such as medical or law, partnerships, farming partnerships, and commission agencies, have been held as non-traders, consequently a partner in any of these concerns cannot, without he has full authority, bind his co-partners by signing the partnership name on a bill. And so, as we have already seen, with the other concerns mentioned ante page 4 et seq.

Signatures.
Professional,
&c.,
Partnerships.

The cancellation of a signature operates as a discharge, unless proof can be given that the cancellation was done of Signature. Cancellation by mistake.

11. ALTERATIONS.—At common law, and independently of the stamp laws, any material alteration in the bill or note, as in the date, or currency, or sum, or statement of consideration, or place of payment, or adding as an obligant a person not originally intended, renders the instrument wholly void, except as amongst the parties consenting to such alteration, if the alteration be made before the instrument is issued or delivered for value. The principle of this doctrine, it is observed, appears to be that the bill or note so altered is not the same instrument which the parties subscribed, and that, while the deed itself no longer affords evidence of what this original instrument was, it is impossible, consistently with the law of written obligations, to admit parole evidence on the subject. Thomson, 205. And this principle applies, whether the alteration be by one of the parties or by a stranger. Thus, an alteration in the date of a bill made by some person unknown, while it was in the possession of the payee, rendered it void even in the hands of an onerous indorsee. Master *v.* Miller, 4 T. R., 320. And in Davidson *v.* Cooper, 11 M. and W., 778, affirmed in error, 13 M. and W., 343, it was held that a deed, bill, note, guarantee, or any other executory written contract, is avoided by an alteration in a material part, though made by a stranger. "For," as observed by Byles 6th ed. 253, "a person who has the custody of an instrument is bound to preserve it in its integrity. And as

Alterations.

Effects of.

Alterations.
Effects of.

When
Vitiating.

it would be avoided by his fraud in altering it himself, so it shall be avoided by his laches in suffering another to alter it."

The addition of a place of payment made by the drawer to the acceptance, without the acceptor's consent, has been held a material alteration, discharging the acceptor, since, as well as before, the passing of the 1 and 2 George IV, cap. 78; for, though the acceptance is still general, the addition induces a presentment at the particular place, instead of to the acceptor himself, who could not be held as having dishonoured the bill when it was presented, and not met at a place where he had not undertaken to make payment. See *Cowie v. Halsall*, 4 B. and Ald., 197, and, amongst other cases after the passing of the Act, *M'Intosh v. Haydon*, R. and M. 362, and *Burchfield v. Moore*, 23 L. J., 261 Q. B. If the alteration be beneficial, and not prejudicial to the objecting party, it will still vitiate. In a case where an additional name was put to a joint and several promissory note after it had been completed, Lord Campbell observed: "The defendant is discharged from his liability if the altered instrument, supposing it to be genuine, would operate differently from the original instrument, whether the alteration be or be not to his prejudice. This principle, which in Pigot's case was established with respect to deeds, was applied to negotiable instruments in *Master v. Miller*, and, as far as we are aware, it has, with one exception, been uniformly acted upon down to the recent case of *Burchfield v. Moore*. The exception is *Catton v. Simpson*. That case certainly does very nearly resemble the present. The defendant had, as surety, signed a joint and several promissory note with the principal debtor, having no reason to suppose that any one else was to sign it. Afterwards the payee, without the knowledge of the defendant, induced another person to sign it, with a view to strengthen the security, and the Court held that the defendant was still liable upon it. But the decision took place merely as

refusing a rule to show cause why there should not be a new trial. It seems to have proceeded on the ground that, as the new surety could not be liable on the note by reason of the stamp laws, the alteration operated nothing, although the counsel urged that 'a note with an altered date does not bind anyone to the new contract, yet the old contract is void.' The judgment of the Court was, without further reasons, in these words: 'In the absence of all authority, we shall hold that this was not an alteration of the note, but merely an addition, which had no effect.' With sincere respect for the learned judges who concurred in this decision, we feel bound to say that, in our opinion, it is contrary to the authorities, and that it is not law." *Gardner v. Walsh*, 24 L. J., 285 Q. B.

If an alteration, however, be made on any part of a bill which is not material, it will not, even without consent, and though made after the bill is complete, be held as vitiating the instrument. Thus, in the case of *Farquhar v. Southey*, 1 M. and M., 14, where a bill was addressed to a firm named Southey and Crowther in this manner, "Messrs. Southey Crowther and Co^y," and they accepted in the name of "Southey and Crowther," and the address of the bill was afterwards altered to correspond with the acceptance by striking out "and Co^y," it was held that, as they would be liable either way, the alteration was immaterial.

And so an alteration made for the purpose of correcting a mistake, and making the bill what it was originally intended to be, will not, even after it has been in circulation, vitiate it, either at common law or under the stamp laws. Thus, where a bill had been negotiated without the words "or order," their subsequent insertion to carry out the original intention of the parties was held not to vitiate the bill. *Kershaw v. Cox*, 3 Esp., 246. So, where a bill had been dated, by mistake, 1822, instead of 1823, and the drawer and acceptor's agent, who had received it to deliver

Alterations.
When
Vitiating.

Alterations.
When not
Vitiating.

Interposition
of Equity.

Effect of
Alterations
under
Stamp Acts.

to the indorsee, had corrected the mistake without their knowledge or consent, it was held that such alteration did not vitiate the instrument. *Brutt v. Picard*, R. and M. 37.

Equity will rectify an instrument which does not express the intention of the parties, *Druiff v. Lord Parker*, 5 L. R., Eq. 131.

OF THE EFFECT OF ALTERATIONS UNDER THE STAMP LAWS.—With the exception of being made, as just seen, for the purpose of correcting a mistake so as to carry out an original intention, a material alteration which has been made upon a bill or note after it has been once *completed* and *issued* will, though effected with consent of all the parties, render the instrument wholly void under the Stamp Acts. In such a case the original agreement is changed, and a new stamp, which cannot be affixed, is required for the new contract. Thus, in *Bathe v. Taylor*, 15 East. 412, it was held that a bill payable to the drawer's order must, when returned to him accepted, be considered as completed and issued, and that therefore an alteration of the date, in order to postpone the payment from 1st to 21st August though made by the drawer with the acceptor's consent, and before indorsement and delivery to a third person, created a new agreement and vitiated the bill for want of a new stamp. And in *Walton v. Hastings*, 4 Camp. 223, a bill drawn by one Brooks in favour of plaintiff was dated 5th July. When presented for acceptance the defendant, the drawee, requested that the date might be altered to the 10th, to which plaintiff agreed, but did not inform Brooks. The plaintiff contended that, as the alteration was made before acceptance, the defendant was liable as acceptor, although the drawer might be discharged; but Lord Ellenborough held that under the Stamp Laws the bill was void. "It was an existing valid instrument before the alteration. It was negotiated when delivered by Brooks to the plaintiff. The plaintiff, as payee, had acquired an absolute interest in it, and might have maintained an action upon it against the

drawer. It did not remain in fieri till the acceptance. As to the drawer, it was before then a perfect instrument, nor was there any mistake to be rectified. When drawn on the 5th of July, it corresponded with the intentions both of the drawer and payee. Here, when the date was altered, a new bill was drawn, and that could not be done without a new stamp." And see further on the point, *Wilson v. Justice, Peake, Add. 96*; *Outhwaite v. Luntley*, 4 Camp. 179; *Bowman v. Nicholls*, 5 T. R. 537, *Cardwell v. Martin*, 9 East, 190; and *Knill v. Williams*, 10 East, 431.

Alterations
under
Stamp Acts.

As regards a material alteration before issue, in the case of *Kennerly v. Nash*, 1 Stark. 452, where the drawer of a bill payable to his order sent it to the drawee for acceptance, and the drawee requested longer time for payment, and an alteration was made to that effect accordingly made, with the drawer's consent and before acceptance, it was held that, the alteration being made before the bill was an available instrument against any party, a new stamp was unnecessary. So, upon the same principle, where three persons joined, as drawer, acceptor, and first indorser, in making an accommodation bill, and the date was altered before issue to a holder for value, it was held that, as the accommodation parties could not, *inter se*, sue upon the instrument, it was not till it came into the hands of a holder for value an available instrument, and that therefore a previous alteration did not vitiate it. "The question," observed Abbott, C. J., "is, whether this alteration made it a new bill? Now, undoubtedly, when an accommodation bill has the names of the different parties written upon it, it is, in some sense of the word, a bill of exchange; but it is utterly unavailable as a security for money until it is issued to some real holder for a valuable consideration. It first became a bill of exchange when it was issued to the indorsee for a valuable consideration." "Here," added Best, J., "at the time when the alteration was made, the bill was a perfect bill in form, but it did not constitute a

Alterations
under
Stamp Acts.

valid contract between the parties. A bond is a perfect instrument before delivery; but still an alteration made before delivery will not vitiate it." *Downes v. Richardson*, 5 B. and Ald. 674; *Byles*, 6th ed. 255.

Of an alteration to correct a mistake, it was held, in *Jacobs v. Hart*, 6 M. and Sel. 142, where upon acceptance the acceptor observed that the bill was by mistake dated March instead of April, and the payee, after communicating with the drawer, altered the date to April, with the subsequent approbation of the acceptor, it was held that this did not vitiate the bill, as the correction was made in furtherance of the original intention of the parties. And see *Webber v. Maddocks*, 3 Camp. 1, and *Byrom v. Thompson*, 11 Ad. and El. 31. In a case where a blank had been left for the payee's name in an accepted bill, and a bona fide holder filled it up with his own, it was held that the bill was not vitiated. "One," says Best, C. J., "who accepts a bill in this form undertakes to be answerable for it in the shape of a bill. That being so, he undertakes to be answerable for it in the form which a bona fide holder has a right to give it, and the description in the declaration is made out against him. No new stamp is necessary; the first stamp gives authority for the insertion." *Attwood v. Griffin*, R. and M. 425.

Where an adhesive stamp may be used, an altered bill may be re-stamped, this making it, in effect, a new bill.

Effect on
Debt.

Of the effect of alterations in relation to the *consideration* or *original debt*, an alteration by the drawer and payee of the bill, or the payee of a note, though it avoids the instrument, does not extinguish the debt, unless the bill or note were taken in satisfaction of the debt. *Sutton v. Toomer*, 7, B. and C. 416; *Atkinson v. Hawdon*, 2 Ad. and El. 628; *McDowall v. Boyd*, 17 L. J., 295 Q. B. An alteration, however, by an indorsee, not only avoids the security as against all parties, but also extinguishes the debt due to the indorsee from the indorser. *Alderson v. Langdale*, 3 B.

and Ad., 660, Byles, 6th ed., 257, who adds that "it would be unjust that the indorsee should compel the indorser to pay his debt, when the indorsee has destroyed the instrument on which alone in some cases, and on which preferably in all cases, the indorser should sue." To make the indorser liable on the consideration, and give him a cross action against the indorsee for the alteration, would be to oblige him to rely on the indorsee instead of the antecedent parties, and to prove a fact of which he might have no evidence; it would, besides, introduce a needless circuituity of action."

Of the onus probandi, or burden of proving in cases of alteration, it lies upon the holder claiming upon a bill or probandi. note to prove that the alteration upon it was made under such circumstances as not to vitiate the instrument. Thus, where there had been an alteration in the date of a bill, the plaintiff, an indorsee, was, in an action against the acceptor, held bound to prove not only that the alteration had been made with the acceptor's consent, but that it had been made before the bill was indorsed by the drawer, to whose order the instrument was made payable. *Johnson v. Duke of Marlborough*, 2 Stark., 313. And in the case of *Bishop v. Chambre*, 1 M. and M., 116, where the plaintiff could adduce no evidence to explain an alteration on a promissory note, the defendant had a verdict. And see *Henman v. Dickinson*, 5 Bing. 183, *Earl of Falmouth v. Roberts*, 9 M. and W., 471, and other cases. From these cases, questions as to the fact, time, and intention of the alteration are for a jury, and not for the Court, to determine.*

* "Where an alteration appears on the face of the bill," says Byles, 6th ed., 258, "it lies on the plaintiff to show that it was made under such circumstances as not to vitiate the instrument. And this rule is most reasonable; for, if it lay on the defendant, on an acceptor, for example, sued by an indorsee, to show that the alteration was improperly made, it might be a great hardship, for he may have no means of proving that the bill went unaltered from his hands, or of showing the circumstances of a subsequent alteration. But the burthen of explaining an alteration imposes no hardship on the plaintiff, for, if the bill was altered while in his hands, he may and ought to account for it; if before, then he took it with a mark of suspicion on its face, which ought to have induced him either to refuse it, or to require evidence of the circumstances under which the alteration was made."

Alterations.

Forgery.

Inland Bill.
Definition.

Every fraudulent alteration of a bill or note is forgery, and procuring a person to forge is an offence within the statutes. *Rex v. Elsworth*, 2 East, P. C. 986, and *Rex v. Morris*, R. and R. 270. Formerly, by various statutes, the forgery of bills and notes, or the uttering of them, knowing them to be forged, was punishable by death. Now, however, the punishment has been commuted to transportation for life.

INLAND BILL.

Pursuing the subject, as it is of importance to have as comprehensive a knowledge of it as possible, and that none of the points demanding attention in practice should be lost sight of, it may be premised that, from the decision in *Mahoney v. Ashlin*, 2 B. and Ad., 478, our text writers have defined the inland bill of exchange to be a bill that is drawn and payable in one only of the realms of the United Kingdom; for, as bills drawn in England and payable in Scotland, or in Ireland, or vice versa, were foreign bills before the union between the countries, the Act of Union could make no alteration in that respect, and that, consequently, those instruments still remained foreign bills, though bills drawn and payable in Scotland, or drawn and payable in Ireland, were under the statute regulating the acceptance of inland bills, the 1 and 2 George IV, cap. 78, to be accounted as inland bills. Now, however, by the 19 and 20 Vic., cap. 97, known as the "Mercantile Law Amendment Act, 1856," and which received the royal sanction on 29th July, 1856, it is enacted, section 7, that "every bill of exchange or promissory note drawn or made in any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the dominions of Her Majesty, and made payable in or drawn upon any person resident in any part of the said United Kingdom or islands, shall be deemed to be an inland bill; but nothing herein contained shall alter or

affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such bill or note." By its last clause, the Act is declared not to extend to Scotland, for which country, however, a similar Act, the "Mercantile Law of Scotland Amendment Act," the 19 and 20 Vic., cap. 60, was passed on the 21st July, 1856.

Inland Bill.
Definition.

It will be observed that the above section expresses generally that, if the instrument be drawn in any part of the United Kingdom, etc., and made payable in, or drawn upon, etc., it shall be deemed an inland bill; and within the previous Stamp Acts it has been held, by the case of *Amner v. Clarke*, 2 C. M. and Rosc., 468, that a bill drawn in England on a party abroad, but payable in England, is an inland bill.

So, from the above section, a bill being drawn in the United Kingdom, etc., upon a person resident therein, would be deemed an inland bill, although made payable abroad.

The inland bill is drawn singly, or in one part only, though in some instances we have seen it drawn in sets by the country banker on his London correspondent, for the purpose of being transmitted and negotiated abroad, and in which case the several parts of the set bear the usual precautionary stipulation, as expressed in the foreign bill, of only being payable while the others remain unpaid.*

The inland bill, though in pretty general use for sometime previously, was not declared legal until so late as the year 1697, when it was found necessary to do so, to enable the Bank of England to make advances upon the

When

* The practice in Scotland of transmitting to Australia single drafts on London, elicited the following letter from the colony of Victoria: "Having recently seen instances of great inconvenience and vexation, as well as loss of time and money, to poor people in this colony, occasioned by their friends in Scotland having sent them out money in the shape of Scottish bankers' sola drafts on London, I would respectfully beg to point out to the country bank managers in Scotland, for it is they principally who commit the mistake, that a sola draft on London will not be negotiated by the banks in this colony until the holder of the draft has been put to the expense of a notarial copy of it. When the banker is aware that the drafts he issues on London are intended for these colonies, he ought invariably to issue them in sets, and instruct the purchaser to send out the complete set." Bank. M., 17, 561.

Inland Bill.
Forms.

instrument. For the early forms of the bill, reference may be made to Lawson's History of Banking, in which several examples are given.

After undergoing various changes in regard both to form and property, the following may now be considered as the recognised and established forms of the inland bill of exchange:—

Bill drawn payable to drawer's order, and without specifying the domicile or place of payment:

DUE 3RD MARCH, 1879.
£350.

Liverpool, 31st January, 1879.

One month after date, pay to my order
Three Hundred and Fifty Pounds, value received
in.....
A. B.

Messrs. C. D. & Co.,

.....

Bill drawn payable to the order of a third party, and in which the domicile or place of payment is specified:

DUE 3RD MARCH, 1879.
£350.

Liverpool, 31st January, 1879.

One month after date, pay to Messrs.
E. F. & Co., or order, IN LONDON, Three
Hundred and Fifty Pounds, value received in
.....
A. B.

Messrs. C. D. & Co.,

.....

It is to the effects of litigation that we are chiefly indebted for this simple, concise, and, at the same time, comprehensive form of the inland bill, and, as it has now settled into a secure and an unassailable shape, the slightest deviation from it should be carefully avoided.

FOREIGN BILL.

Though the Chinese have been credited with being the originators, or first contrivers and users, of the bill or note, as indeed to that nation have been attributed, and apparently with some show of reason in most cases, the origin of many schemes and inventions to which other nations have laid claim, and also as being familiar with what have been deemed modern discoveries or contrivances, yet, in respect of the foreign bill at least, the merits of its invention or first adoption have been by some given to the Jews and Lombards, and by others to the Florentines, after they had been driven from their country by the Tuscan factions and the civil wars between the Guelphs and Ghibelines.

Foreign Bill.
Origin and
Introduction.

However this may be, it was not until the beginning of the seventeenth century, though introduced several centuries earlier, and at first recognised as the only legal means by which money could be sent out of the kingdom, that the foreign bill was in much use here, and since that time, it is hardly necessary to observe, the instrument has maintained a very prominent and important place in the affairs of commerce. It has been said that its first negotiation and identification with commerce may have originated from the delivery of the instrument to a third party about to visit the country in which the acceptor lived, and who, before leaving, would pay over the amount to the drawer. That this party, being interrupted in his journey, or not proceeding the whole distance, may have transferred it for value to another, who in his turn may have handed it to a fifth, all having confidence in some of the preceding parties, and each receiving compensation for trouble, and for the length of time which might have to elapse before maturity of the instrument. Whether such may have been the case or not, the supposition affords a good illustration of the principle upon which the negotiation of the foreign bill proceeds, however great the

Foreign Bill.

improvements may have since been, both in the form of the instrument and in its mode of transference.*

Definition.

The foreign bill of exchange may be defined as a bill drawn and made payable abroad, or a bill drawn abroad and made payable in this country, or a bill drawn in this country upon, and made payable abroad. In these three different forms we shall now present it, not only that a more comprehensive idea may be formed of its nature, but because we shall have occasion to make reference to it under each of these distinctive features.

Forms.

1st. The foreign bill drawn and made payable abroad :—

DUE 3RD JULY, 18 . . .

Rheydt, 3rd April, 18 . . .

Fur fg. 830 im 24 flf.

Drei monate nach dato, zahlen sie gegen diesen unsern Wechsel an die ordre der Herren Smith and Son, Liverpool, die summe von Acht Hundert und Dreisig Gulden, im 24flf. den werth in Rechnung, und stellen solche auf Rechnung laut bericht.

GEBR. ZITZ.

Herren

Neukirch & Schleiermacher,

In Frankfurt O/M.

* The manner in which debts between traffickers in distant countries are settled by means of the foreign bill may be thus illustrated :—A. B., a trader in this country, is indebted to C. D., a foreign merchant, who in his turn is a debtor to E. F. & Co., a firm here. C. D., the foreign merchant, draws a bill upon A. B., payable by him to E. F. & Co., or their order, and by this means the debts both of A. B. and C. D. are simultaneously and easily settled. Should C. D., however, not be indebted to anyone here, he may yet draw a bill upon A. B. and sell it to some neighbouring trafficker who has to pay for goods received from this country. Or A. B. may purchase a bill here upon some merchant in the place where C. D. resides, and, indorsing it over to C. D., the debt will be cancelled by the latter receiving payment from his neighbour merchant.

It may perhaps be added that, in some species of foreign transactions with remote countries, it is not unusual for payment to be effected by the medium of bills drawn on agents in this country. Thus a trader of Liverpool consigns goods for sale on his account to a commission merchant in Rio de Janeiro. The latter merchant has an agent in London, and, by an arrangement between

2nd. The foreign bill drawn abroad, and made payable in this country :—

Foreign Bill.
Forms.

DUE 18TH JUNE, 18 .

Aracaty, 12 de Fevereiro de 18 .

Sao £500. .

A sessenta dias precisas sirvao se Vm^{ces}. pagar por esta primeira via de Letra de Gambio (nao shavendo feito pela segunda ou terceira) a ordem do Snr Teodoro Joaquim Carraciolo, dapraia de Pernambuco, a quantia de Libras Sterlina quinhentos Valorem Conta e no seu vencimento fara o prompto pagamento do costume como lhes avisao.

Ao 19th MARASCHINO & ZARA & CIE.
Bucellas, S^t. Peray & Co.,

Sn^{res}. Bucellas, S^t. Peray & Co.,

London.

3rd. The foreign bill drawn in this country upon, and made payable abroad :—

Liverpool, 28th March, 18 .

£750.

Three months after date, pay this our first of exchange (second and third unpaid), to the order of the Bank, seven hundred and fifty pounds sterling, at the exchange as per indorsement in London, which place to account as advised.

CHAMBERTIN & HERMITAGE.

To Messrs. Walportzheimer & Co.,

Amsterdam.

the several parties, the Liverpool trader at once draws upon the agent in London for part of the invoice price of the goods consigned, the balance being subsequently drawn for in the same way when the account sales are furnished by the Brazilian merchant.

Foreign Bill.
Peculiarities.

The foreign bill is governed, generally, by the same rules which affect the inland bill of exchange and promissory note; but, from its connection with other countries, it possesses some slight peculiarities, which it will be necessary to consider, along with one or two points, in which a distinction is observed between it and the instruments named.

Sets.

For greater security against loss or miscarriage, the foreign bill is generally drawn in sets, which mostly consist of three several parts, each part being an exact copy of the other, with the necessary variation of the numbers, as expressed, of the instrument, and in the condition which it bears of the others being unpaid, as in the case of the second part of the last of the preceding forms: "Three months after date, pay this our second of exchange (first and third unpaid), to the order," etc. Upon the arrival of the first part, the drawee accepts it, and he should, of course, take care not to accept the others, as he might be liable to be sued on them, and on payment he should insist upon production of the actual part which he accepted.

In some cases, a party does not negotiate the bill which he draws until the first part is accepted. Suppose the drawers of the third form of bill given above, Chambertin and Hermitage, send off their first of exchange to their correspondent in Amsterdam, to be accepted by Walportzheimer & Co., they request him to retain the bill and send advice of its acceptance, then negotiating the second of exchange, which bears that the first lies accepted at Amsterdam, they have thus a readier sale for the instrument from its having the additional security of the acceptor's name, and, if payable "after sight," from the date of its maturity being in that case fixed. When the instrument arrives at Amsterdam, the holder presents it to the correspondent, and gets up the first of exchange which has lain there accepted.

Sometimes we have seen a copy of the first part itself of a set, payable in London, negotiated, the instrument in such case containing at its foot a notification as to where the original is lying accepted, and bearing on its other side, and preceding the indorsements, "So far copy." The negotiation of copies of bills is not infrequent on the continent, but then, generally, only when the bill is not drawn in a set. As to the circulation of copies, it has been observed : "L'usage des copies quoiqu'il ne soit pas consacré par la loi n'en est pas moins valable. L'endosseur qui crée un copie, après avoir negocié l'original, est tenu de mentionner dans la copie l'endossement qu'il a écrit sur le titre même. Si, au contraire, après ces mots pour copie, il appose un endos, il fait supposer que l'original n'est pas endossé, et il est responsable vis-à-vis du porteur de bonne foi de la copie." Cour Royale de Paris, 14 Janvier, 1830, Sirey, t. 30, L. 172.

It is said that if one part be lost by the drawee, or be by his mistake given to a wrong person, or if the holder, from whatever other cause, be unable to procure it back, accepted or unaccepted, the drawee must give to the holder, or to his order, a promissory note for payment of the amount of the bill on the day it becomes due, on delivery of the second part, if it arrive in time ; if not, upon the note, and if the acceptor refuse to give the note, the holder must immediately protest for non-acceptance, and, when due, must demand the money, though he have neither note nor bill, and, if payment be refused, a protest must be regularly made for non-payment. Vide Chitty and Authorities, page 296, 8th ed. Where a bill is lost and a new one cannot be had from the drawer, a protest may be made on a copy. Dehers *v.* Harriot, 1 Show., 163.

The condition as to payment only while the others remain unpaid, should, of course, be inserted in each part of the bill, as an omission to do so in one part may render the drawer liable to pay more than one. Davison

Foreign Bill.
Copies.

Omission of
reference to
other parts.

Foreign Bill.

v. Robertson, 3 Dow, 218, 228, Beawes 430, Poth. Pl. 111,
2 Pard. 367.*

Circulation of
parts.

As the parts should circulate together, excepting in the case alluded to above, where the first is forwarded for acceptance, it is the duty of a holder receiving one part to inquire after and satisfy himself as to the others. If the different parts have got into the hands of distinct holders, it has been said that he to whom any part of the set has been first transferred is entitled to all the other parts, and that he may maintain trover for them even against a subsequent bona fide holder. Holdsworth *v.* Hunter, 10 B. and C. 449; Perreira *v.* Jopp, 10 B. and C. 450, N.

In the event of a person being under an obligation to deliver a foreign bill, it is said that he is bound to deliver as many parts as may be applied for. 1 Pardessus, 334.

In practice, the holder indorses all the parts of the set he holds, and, should he have to pay, he should not do so unless all the parts he has indorsed be delivered to him. If he indorse two parts to different persons, he may be liable on each. Holdsworth *v.* Hunter, supra.

We have seen, ante p. 91, that if one of the set be duly stamped the others are exempt, "unless issued or in some manner negotiated apart" from the stamped one. And the Act provides, by same section, 55, that "upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been

* "This condition," says Bayley, 5th ed., 28, "should be inserted in each part, and should in each mention every other part of the set; for if a man, with an intention to make a set of three parts, should omit the condition in the first, and make the second with a condition, mentioning the first only, and in the third alone take notice of the other two (which, by the way, is the mode pointed out by Molloy, b. 2, c. 10, s. 14; Malynes, b. 3, c. 5, pp. 261-2; and Marius, p. 7), he might, perhaps, in some cases, be obliged to pay each, for it might be questionable if it would be any defence to an action on the second that he had paid the third, or to an action on the first that he had paid either of the others."

"But an omission," it is added, "is not perhaps material, which upon the face of the condition must necessarily have arisen from a mistake; as if, in the enumeration of the several parts, one of the intermediate ones were to be omitted, for instance, 'Pay this my first of exchange; second and fourth not paid,'"

issued or in any manner negotiated, apart from such lost or destroyed bill, may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.”

Of the preceding forms of the instrument, it will be observed that, in the first form, the particular kind of money in which the bill is to be paid is specified thus: “Die summe von acht hundert und dreisig gulden im 24 flf.,” etc.; or, “The sum of eight hundred and thirty gulden (or florins), payable in 24 guldenfuss,” or florin-foot, a particular kind of coin circulated in Frankfort.*

Conditions of this kind are not infrequent in bills payable in foreign coin; and, with regard to the holder in this country, he may treat such bill as dishonoured if it is not accepted according to its precise terms. *Boehm v. Garcias*, 1 Camp., 425, where Lord Ellenborough held that the holder was not bound to take an acceptance to pay in a different kind of money from that mentioned in the bill, the drawee having no right to vary the acceptance from the terms of the bill, unless they be unambiguously and unequivocally the same.

In the second form, the time of payment is “a sessenta dias precizas,” or “at sixty days fixed,” and, when so expressed, the instrument is due and payable at the expiry of the sixty days, without days of grace.

In the third form, which exhibits a concise but complete specimen of the bill as drawn in this country, the amount is expressed in the money of England. Sometimes, however, the instrument is drawn in the money of the foreign country in which it is made payable, and, when this is the

* This coin is, we believe, now withdrawn from circulation, the present coin circulation of Frankfort being “marks” and “pfennige,” 100 of the latter being equal to 1 mark, 20 marks being about £1 sterling. There are throughout the German Empire, 5, 10, and 20 mark pieces in gold; and 1, 2, and 5 mark pieces in silver. There are also 20 and 50 pfennige pieces in silver, and 5 and 10 pfennige pieces in nickel; and there are various copper coins for smaller amounts.

Foreign Bill.
Circulation of
parts.

Sum.

Time of
Payment.

English Bill
drawn in
Foreign
Money.

Foreign Bill.
English Bill
drawn in
Foreign
Money.

case, it is necessary to be guarded in the specification of the amount, as, for instance, in Spain, there is a kind of paper money termed "vales reales," generally at a considerable discount. Bills drawn upon that country should, therefore, be expressed to be "payable in effective money, and not in vales reales," or, in more full terms, "en oro ú plata efectivo y no en vales reales, ni otro papel moneda."* A similar precaution is necessary with regard to bills drawn upon other parts of the continent.

Should the value of the foreign coin for which the bill is drawn be depreciated by the Government of the foreign country, it has been decided, in one case here, that the bill shall be payable according to the value of the money at the time it was drawn. See *Da Costa v. Cole, Skinner* 272.†

Exchange
as per
Indorsement.

The requisition, "at the exchange as per indorsement in London," in the above form, is used to render the bill negotiable, the first London indorser in his transference of the instrument fixing the rate of exchange at which the bill is to be paid when due. Thus, when negotiated, the indorsements on the form in question would be :—

* Bills are now drawn in pesetas and centesimos. Of the present currency, 4 reales de vellon are equal to 1 peseta, and 5 pesetas to 1 peso fuero or duro. 20 reales are 1 dollar, and 100 reales about £1 sterling.

In "Tate's Modern Cambist," it is stated, 17th ed., 21 : "Bills on Spain and Portugal are not negotiable unless their tenor says that they are 'payable in gold or silver,' to which frequently is added, 'and not in any paper.'"

† Chitty, 10th ed., 275, says: "It is a question on which authorities are divided, whether, in case an alteration has been made in the value of the currency between the day of the date of the bill and the time of payment, the holder is bound by the alteration, or is entitled to receive value according to the state of the currency when the bill was drawn. The law of this country appears to be that, where both drawer and drawee are resident in the United Kingdom, they are bound by any alteration made in the currency by the proper authorities; but that, if the drawer be resident here, whilst the drawee is a foreigner resident in his own country, where the Government has, between the time of drawing and that of paying the bill, depreciated their currency, the drawer is not bound by the alteration, and is entitled to receive the original value in full. Pardessus appears to agree with both these propositions; but Vinnius, with whom a majority of foreign jurists agree, takes what seems to be an arbitrary distinction between the alteration of the coin by alloy, and the alteration of it in nominal value by positive law, and founds on that distinction the following rule: 'Siquidem neutri contrahentium injuriam fieri volumus, ita definiendum videtur, ut si bonitas monetarum intrinseca mutata sit, tempus contractus, si extrinseca, id est valor impositius, tempus solutionis, in solutione facienda spectari debeat.'

Foreign Bill.
Exchange
as per
Indorsement.

“Pay Messrs. Bell & Co., or order,
“Per pro the Bank.
“A. B., Manager.

“Pay Messrs. Hermann Krauss & Co., or order, at the
exchange of twelve florins and one stiver per pound sterling,
value received.

“BELL & Co.
“London, 31st March, 18 .”

Without the above requisition, the bill, in coming to the hands of the banker, would be merely held by him for collection on his constituent's account.*

The succeeding words, “which place to account,” have been long pretty generally used in the foreign bill. They, however, merely convey a private requisition by the drawer to the acceptor, and, as affecting the validity of the instrument, the words are altogether unnecessary.

The concluding expression, “as advised,” now out of use in the inland bill, generally forms the termination of the foreign instrument. Its introduction in the latter is of importance to the drawee, who, for greater protection, should neither accept nor pay until receipt of the letter of advice. Without such separate letter, it is thought that he cannot with safety pay. When not expressed, or when the bill is drawn payable, as it sometimes is, “with or without advice,” or “without further advice,” the drawee's authority to accept and pay is, of course, sufficient from the instrument itself.

On receiving the bill, the country bank should immediately transmit it to their London correspondent for negotiation and credit. As the English banker, however, does not like the foreign or continental banker engage

* “The amount of a foreign bill,” it is said in “Tate's Modern Cambist,” 17th ed., p. 17, “is usually expressed in the money of the country in which it is to be paid, but sometimes it is drawn in the money of the country of the drawer of the bill; thus, in this kingdom, mercantile bills for shipments, or for settlements of accounts, and especially those remitted from the country for negotiation or sale in London, are frequently drawn in sterling money. Such bills, however, have generally the words ‘payable as per indorsement’ inserted in their tenor, and are, in such a case, paid abroad at the rate of exchange at which they are first negotiated, as stated in the indorsement. Bills in sterling money on foreign countries without the above indication, are generally paid abroad at the short exchange on London of the time being.”

Foreign Bill.
Negotiation.

in the sale or purchase of foreign bills, the instrument, as soon as it arrives in the metropolis, is handed to an "exchange broker," who, after disposing of it to the best advantage, pays over the proceeds to the banker. The exchange brokers are in the habit of going round daily to the leading merchants to ascertain whether they are buyers or sellers. Having discovered the relative supply and demand, a few of the more influential brokers fix a price, at which the greater part of the day's transactions are settled.*

Upon advice of the negotiation, the country bank should furnish notice of the circumstance to their constituent, as in this manner, for the first of our forms :—

The Provincial Bank,
Liverpool, 29th April, 18 . . .
Gentlemen,

I beg to advise that bill on Neukirch & Schleiermacher, Frankfort O/M, 3rd April, at 3 m./d., fg. 830, was negotiated in London, on 28th inst., at 121½, and that you are accordingly credited with the proceeds—£68 4s. 10d.

I am, Gentlemen,
Your most obedt. Servant,
A. B., Manager.

To Messrs. Smith & Son,
..... Liverpool.

* The course of business in connection with the sale and purchase of foreign bills is thus described in the case of *Suse and others v. Pompe and another*, 5th June, 1860, 8 C. B., N. S. 542 :—When a London merchant has to receive money from a correspondent abroad, he instructs his bill broker to sell an amount of florins, or whatever the current coin of the country on which the bills are to be drawn may be, sufficient at the current rate of exchange to raise the amount in sterling money which he has to receive. The rate of exchange is constantly varying, but, usually, the fluctuations do not amount to much. As soon as the seller knows at what rate of exchange the bills have been sold, he draws them in florins or other foreign money, and thus the bills simply entitle the buyer of them to receive so many florins, etc., and they contain no allusion whatever to the amount of sterling money paid for them. Inasmuch, however, as there is no rate of exchange for foreign bills at Liverpool or other places in the interior, and as, by reason of the daily fluctuations in the rate of exchange, merchants at those places do not know at what rate their bills will be sold in London, they are unable to draw them in foreign coin, it is usual to draw such bills in sterling money, but "payable at the exchange as per indorsement." The London correspondent, when he has sold the bills, and knows the amount of foreign money which the buyer is to have, indorses them, payable at the agreed rate of exchange, and thus the bills are practically turned into bills payable in foreign money. The rate of exchange at which foreign bills are sold varies somewhat in proportion to the commercial position and standing of the sellers, and, in calculating the rate of exchange, interest for the time the bills have to run is always taken into account.

And, for the third :—

Foreign Bill.
Negotiation.

The Provincial Bank,

Liverpool, 1st April, 18

Gentlemen,

I beg to advise that bill on Walportzheimer & Co., Amsterdam, 28th March, 3 m./d., for £750, is negotiated at 12*1*.

I am, Gentlemen,

Your most obedient Servant,

A. B., Manager.

Messrs. Chamberlin & Hermitage,

..... Liverpool.

A general knowledge of these quotations of exchange will be acquired from the following explanation, given in "Tate's Modern Cambist," 17th ed., pages 1 and 19 :—

"A rate of exchange is the value or price of the money of one country reckoned in that of another country. There are, accordingly, two terms in a rate of exchange, of which the one is fixed, the other fluctuating. Thus, in the exchange between London and Paris, the fixed term is the £ sterling ; the fluctuating term, the value or price given in francs or centimes in exchange for the £ sterling. In the exchange between London and Lisbon, on the other hand, the milreis is the fixed term, whilst the value given in pence sterling forms the fluctuating term. When the fixed term is expressed in the money of the country drawing the bill of exchange, the drawing place is said to *receive* the fluctuating or variable price ; whilst in the reverse case, where the fluctuating or variable term is expressed in the moneys of the drawing place, the latter is said to *give* the fluctuating or variable price. Thus, London *receives* from Paris..... francs and centimes for £1 sterling, and London *gives* to Lisbon..... pence for one milreis. In the quotations of rates of exchange the fixed terms are generally omitted, and the variable terms alone are called rates of exchange. The exact equivalent value of the moneys or currencies of different countries are called pars of exchange between these countries.

Foreign Bill.
Rates of
Exchange.

"The short rate of exchange between two countries will agree with the par of exchange if there is no balance of indebtedness between the two countries. If such a balance exists, the short exchange will deviate from the par of exchange until the difference between the par of exchange and the short exchange is large enough to cover the expenses of shipping bullion from the country with the greater indebtedness to the creditor country. The long rate of exchange between two countries is based upon the short exchange between them, and is equal to the short exchange, less the interest accruing on a long bill during its currency."

"THE LONDON COURSE OF EXCHANGE,
"or the rates of exchange at which bills on various foreign places are negotiated, is given in the following manner:—

"LONDON RECEIVES:

Austria	3 months	fl. 11·75	for £1 sterling.
Belgium			
France	Short & 3 months	fr. 25·25	, £1 ,,
Switzerland			
Italy, gold			
Denmark	3 months	kr. 18·40	, £1 ,,
Germany	,,	m. 20·55	, £1 ,,
Holland	Short & 3 months.	fl. 12·3 stivers	, £1 ,,
Italy, paper	3 months	lire 28·10	, £1 ,,

AND GIVES:

East Indies	Sight.....	1s. 8d.	for 1 rupee.
Hong Kong	,,	3s. 9d.	, 1 dollar.
Shanghai	,,	5s. 2d.	, 1 tael.
New York	,,	48d.	, 1 U.S. dollar.
Portugal	3 months	52d.	, 1 milreis.
Rio de Janeiro ...	Sight.....	26d.	, 1 Brazilian milreis.
Russia	3 months	25d.	, 1 silver rouble.
Spain	,,	48d.	, 1 hard dollar."

The exchanges, however, vary from day to day, and the rates thus given are only meant as the average rates for guidance.

Of the rupee, it is stated, in the same work, p. 112, that "since 1862 the Government rupee has replaced the old

Company's rupee, as well as all the other rupees in circulation. The Government rupee being exactly of the same weight and fineness, however, as the old Company's rupee, the change is simply one of name, and, even as regards this, the old 'Company's rupee' still continues to figure in some courses of exchange."

Foreign Bill.
Rates of
Exchange.

The days for the negotiation of foreign bills of exchange are Tuesdays and Thursdays, the bills thus negotiated being delivered the same day, and paid for on the following day.

In the variations of the rate of exchange between two places, the higher that it rises the more will it be in favour of the place which receives the variable price, so that adopting the par of the above table, when the exchange between London and Amsterdam exceeds 12 florins 3 stivers, it will be so much in favour of London, and when it falls below that sum so much against London, or below par.

Shortly, when the exchange is quoted in foreign money, the lower it is, the less favourable; and the higher it is, the more favourable it becomes to England; and when quoted in sterling money, the lower the more favourable, and the higher the less favourable to England.

The chief circumstances which affect the foreign exchanges are the depreciation of the coins of a country from the mint value, and the scarcity or abundance of bills used in exchange and drawn by one country upon another. Thus, in the former instance, if the coins of France were debased 10 per cent. from the standard of her mint, while those of this country preserved their standard value, there would, to pay a debt of £100 of our money, be required £110 in the money of France.*

The
Exchanges.

* By the mint regulations of Great Britain and France £1 sterling is equal to 25 francs 20 centimes, and when bills are negotiated at this rate, the exchange between the two countries is said to be at par. Thus, in a case of depreciation as above, a bill on London for £100 would be worth in Paris 2772 francs instead of 2520 francs.

Foreign Bill.
The
Exchanges.

Variations, however, in the rate of exchange, arising from this cause, are purely nominal. The real exchange relates to the interchange of commodities without reference to the precious metals. Where the commodities furnished between two countries are the same in value, the separate claims are of course equal, and the real exchange is said to be at par, but where the one country exports more to, than it imports from the other, then the exchange is in its favour to the extent of the balance it has to receive, and this is discharged by bills, or by goods or bullion, whichever of these may be deemed the most economical to transmit by the debtor country. It may happen that a country may have the nominal exchange against it, while the real exchange is in its favour, and this is adjusted by "computed exchange," which makes allowance for the one while taking credit for the other.*

By buying bills where they are cheapest and selling them where they are dearest, the exchange brokers or bill merchants facilitate the tendency which the foreign exchanges have to correct themselves. Thus, as has been illustrated, England might owe large excess of debt to

* Formerly numerous expedients were resorted to for facilitating exports and restricting imports under the idea that a favourable balance led to the introduction in a corresponding degree of the precious metals, and thus by so much increased the wealth of the country. The unsoundness of this view, however, has long since been acknowledged. "Suppose," says McCulloch in his Commercial Dictionary under the head Balance, "that the balance of debt, or the excess of the value of the bills drawn by the merchants of Amsterdam on London over those drawn by the merchants of London on Amsterdam, amounts to £100,000, it is the business of the London merchants to find out the means of discharging this debt with the least expense; and it is plain that if they find that any less sum, as £96,000, £97,000, or £99,900, will purchase and send to Holland as much cloth, cotton, hardware, colonial produce, or any other commodity as would sell in Amsterdam for £100,000, no gold or silver would be exported." Thus, "the balance of payments might be ten or a hundred millions against a particular country, without causing the exportation of a single ounce of bullion. Common sense tells us that no merchant will remit £100 worth of bullion to discharge a debt in a foreign country, if it be possible to invest any smaller sum in any species of merchandise which would sell abroad for £100, exclusive of expenses." In fact the precious metals are comparatively seldom used in the settlement of a balance due from one country to another, and on the point of the comparative value of exports and imports it would seem that a country to be truly a gainer in its commerce, should have the value of its exports exceeded by that of its imports.

another country, yet, as the aggregate amount of the debts due by one country are usually balanced by the amount of those it has to receive from other countries, the bills that were deficient upon the country to which England was indebted might be compensated for by an equal abundance of bills on some other country. In such a case the bill merchants would buy up the bills drawn by other countries upon the debtor country, and dispose of them in London, and thereby prevent any great fall in the price of bills in those countries where the supply exceeded the demand, and any great rise in England or other countries where the supply was deficient. For instance, in the trade between Italy and this country, the bills drawn on England are almost invariably larger than those drawn on Italy, but the bill merchants by buying up the excess of the Italian bills on London, and selling them in Holland and other countries indebted to England, prevent the real exchange from being much depressed.

Foreign Bill.
The
Exchanges.

The adoption of the bill as a medium of adjustment depends upon the comparative expense attending its use with that of the precious metals. Thus, if a debtor finds that he can procure a bill to remit to his creditor for a little more than the amount of his debt, and for less than what he would have to pay in the shape of freight, insurance, and other attendant charges for transmitting bullion, he will send the bill, but if the expense of sending the latter should prove greatest, the bullion will be sent in preference. It will be thus perceived that it is the expense of remitting the precious metals which constitutes the true difference of exchange between one country and another, though from this point there may be a little divergence occasioned by the variations in the demand and supply of bills.*

* The subject of foreign exchanges will be found discussed at more or less length in the works, amongst others, of McCulloch, Mill, Ricardo, Adam Smith, Tooke, Tait, and Waterston.

THE PROMISSORY NOTE.

Promissory
Note.

When made
Negotiable.

Formerly the promissory note, sometimes denominated a "note of hand," was not regarded as a negotiable instrument, and though many attempts were made to have it put on the same footing as a bill, it was not until the passing of the 3 and 4 Anne, cap. 9, made perpetual by 7 Anne, cap. 25, sec. 3, that it received all the advantages of the inland bill of exchange.*

The words of the Act, in special reference to this, are :—

"And also every such note payable to any person or persons, body politic and corporate, his, her, or their order, shall be assignable or indorsable over in the same manner as inland bills of exchange are, or may be, according to the custom of merchants ; and that the person or persons, body politic and corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same in such manner as he, she, or they might do upon any inland bills of exchange made or drawn, according to the custom of merchants, against the person or persons, body politic and corporate, who or whose servant or agent as aforesaid signed the same ; and that any person or persons, body politic and corporate, to whom such note that is payable to any person or persons, body politic and corporate, his, her, or their order is indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, shall and may maintain his, her, or their action for such sum of money either against the person or persons, body politic and

* In Scotland these advantages were not secured until a much later period, the 12 Geo. III, cap. 72 (made perpetual by 23 Geo. III, cap. 18, sec. 55), being the first enactment which secured to notes in that country all the privileges of bills of exchange. By Forbes, a case is mentioned, in which a note was found null, in consequence of its not having been drawn with a testing clause.

In England previous to the above enactment of Anne, the validity of the note met with a strenuous opponent in Lord Holt, who pertinaciously held that no action could be maintained, even by the payee, on a promissory note, and that the instrument was only evidence of a debt.

corporate, who or whose servant or agent as aforesaid signed such note, or against any of the persons that indorsed the same in like manner as in cases of inland bills of exchange ; and in every such action the plaintiff or plaintiffs shall recover his, her, or their damages and costs of suit ; and if such plaintiff or plaintiffs shall be nonsuited, or a verdict be given against him, her, or them, the defendant or defendants shall recover his, her, or their costs against the plaintiff or plaintiffs ; and every such plaintiff or plaintiffs, defendant or defendants, respectively recovering, may sue out execution for such damages and costs by capias, fieri facias, or elegendit." 3 and 4 Anne, cap. 9, sec. 1.

This being the case, the promissory note may now, after indorsement, be considered as a bill of exchange, and it will therefore only remain for us, after giving the familiar forms of this instrument, to mention one or two slight distinctions necessarily arising from its construction.

The common form of the promissory note is :—

DUE 4TH SEPTEMBER, 1879.

London, 1st March, 1879.

£5,000.

Six months after date, I promise to pay to A. B., or order, five thousand pounds, value received.

C. D.

Or, expressing place of payment :—

DUE 4TH SEPTEMBER, 1879.

London, 1st March, 1879.

£5,000.

Six months after date, I promise to pay to A. B., or order, at the Bank of England, London, five thousand pounds, value received.

C. D.

Promissory
Note.
Forms.

When there is more than one maker to the instrument, and when payment of interest is expressed, it generally runs thus :—

ON DEMAND.

London, 1st March, 1879.

£1,500.

On demand, we jointly and severally promise to pay to A. B., or order, one thousand five hundred pounds, with interest thereon from this date, at the rate of five per cent. per annum, value received.

C. D.

E. F.

Parties.

The party who promises to pay is called the maker, in contradistinction to the term drawer, in the bill of exchange ; he to whom it is payable, the payee ; and he to whom the latter transfers it, the indorsee. When this instrument is indorsed, it may therefore be said to be ex eadem substantia a bill, for then the payee, as indorser, becomes the drawer, the maker the acceptor, and the indorsee the payee.

After sight.

When the note is drawn payable at a certain time "after sight," presentment must be made to the maker to fix the time of its becoming due. *Sturdy v. Henderson*, 4 B. and Ald., 512, where it was contended that the maker had sight of the instrument when he made it, and, therefore, that it became due from its date. It was held, however, that, as in the case of bank post bills at seven days' sight, a new presentment was necessary.

Domicile.

The statute 1 and 2 Geo. IV, cap. 78, not extending to promissory notes, it is necessary, when the instrument is made payable at a particular place, to make presentment at that place, in order to charge the maker or any other party. The place, however, must be specified in the body of the instrument, as in the second of the preceding forms ; for, if it be expressed at the foot or on the margin of the note, the writing will be esteemed in law as merely a

memorandum, and not as forming part of the contract. Sanderson *v.* Bowes, 14 East, 500; Roche *v.* Campbell, Promissory Note. 3 Camp., 247; Price *v.* Mitchell, 4 Camp., 200; Williams Domicile. *v.* Waring, 10 B. and C., 2.*

It has not been unusual of late for the maker to draw his promissory note payable to his own order; and it has been decided, after much discussion, that a note made in this shape, and indorsed in blank, becomes in effect a note payable to bearer, and, if specially indorsed, it becomes a note payable to the indorsee or order. Browne *v.* De Winton, 17 L. J., 281 C. P.; Gay *v.* Lauder, 17 L. J., 286 C. P.†

By Taylor *v.* Dobbins, 1 Stra., 339, and other cases, if the maker of a note draw it thus, in his own handwriting: "I, A. B., promise to pay," etc., it will be sufficiently valid and binding, without his signature attached. Unsigned.

A note by two or more makers may be either "joint" or "joint and several." When it is drawn "jointly," all the makers must be sued, and, if one of them die, there will be no remedy at law against his personal representative. When drawn "jointly and severally," the makers may be sued either separately or together, at the option of the holder, and, if one of them die, his representative may be sued at law. Joint and Several.

The importance of these terms, then, is apparent, when it is desired that a debt should be thoroughly secured. In such a case, the note should always be drawn "jointly and severally."‡

* In one case, that of Trecothick *v.* Edwin 1 Stark. 468, where the body of the note was printed, with the exception of the date, sum, and names, and the place of payment likewise printed at the foot of the note, Lord Ellenborough held presentment there necessary. But this decision may be considered as overruled, and see Masters *v.* Barretto, 19 L. J., 50 C. P.

† The requisition of the statute of Anne, ante, it may be observed, is that the note shall be made payable to another person or order, or to bearer. S. I.

‡ "When it is proposed," says Chitty, 8th ed., 563, "that several persons, whether as principals only, or as principal and sureties, shall give a note to secure the payment of a debt, it is advisable that they should severally, as well as jointly, promise to pay; for if it be only a joint note, and one of them die,

Promissory
Note.
Joint and
Several.

Partner.

Release.

Drawn with
intention
to evade
Payment.

Additions.

On this point it has been held that a note beginning thus, "I promise to pay," and signed by more than one party, is joint and several. *March v. Ward*, Peake 130; *Clark v. Blackstock*, Holt 474. In such a case, therefore, the remedy would be more ample to the holder than if the word "we" had been used, for with the latter expression the liability of the parties is merely joint.

A partner by a joint and several note cannot make his co-partner severally liable, though he may make the partnership jointly liable and himself severally. *Perring v. Hone*, 4 Bing., 28; *Penkivil v. Connell*, 5 Ex., 381.

If a joint, or a joint and several, maker of a note be discharged by the holder, the rest are also released. *Nicholson v. Revill*, 4 Ad. and E., 675.

A maker drawing his note in the terms, "I promise not to pay," or "I promise never to pay," is as responsible as if the note had been drawn in the usual form, for "a man shall never say I am a cheat, and have defrauded." Lord Macclesfield cited by Lord Mansfield, *Russell v. Langstaffe, Bayley*, 6.

And the rule is: Nulla impossibilia aut in honesta sunt praesumenda vera autem et honesta et possibilia.*

An addition made to a note to the effect that title deeds were given in security, was held not to invalidate the note. *Wise v. Charlton*, 2 Har. and W., 49, nor reference to an agreement where it does not appear that the agreement qualifies the note. *Jury v. Baker*, 28 L. J. 255, though an agreement to give further security in future would invalidate

then there will be no remedy at law against his personal representative, and, in case he was only a surety, a court of equity would not grant relief against his estate, whereas, if the note were several as well as joint, the executors of a deceased party may be sued at law; and it should seem that, if it was originally intended that a note should be several as well as joint, a court of equity would relieve as well against a surety as a principal."

* Some years ago, in Scotland, a writer or solicitor, to evade payment, had given to his creditor a note expressed as payable "at the day of judgment." On action raised before one of the Edinburgh Courts, the writer, in defence, directed special attention to the terms of the instrument, when the presiding judge at once replied: "The note is perfectly valid, and, as this is the day of judgment, we decree that you make immediate payment."

the instrument as a note. Byles, 13th ed., 12, who, with reference to the note with the first-named addition, says: "But such a note will generally require a mortgage stamp (as well? see 33 and 34, Vic. cap. 97, sec. 8, pt. 2), which might, however, be impressed on the note after it was made."

It has been decided, there having been formerly doubts upon the subject, that English promissory notes are, under the 3 and 4 of Anne, transferable abroad. De la Chaumette *v.* The Bank of England, 2 B. and Ad., 391, where in an action on a note which had been negotiated in France, it was held that its negotiability was governed in France by the law of England.

The law as to presentment for payment of a promissory note payable on demand requires that it should be presented within a reasonable time, this depending greatly upon the circumstances of each case. Thus, in the Chartered Mercantile Bank of India, London and China *v.* Dickson, P.C., L. R., 3 P. C., 574, where a demand promissory note dated 16th February, 1864, and the payment of which was not contemplated by the makers at any immediate or specific date, was presented to the payee for payment on 14th December following, it was held by the judicial committee, overruling the judgment of both the Inferior and Superior Courts below, that it appearing from the evidence that the note was meant to be, to a greater or less extent, a continuing security, the delay in presentation was, in the circumstances of the case, not unreasonable, and the holders of the note were entitled to recover.

The peculiar distinguishing features between the principal debtors of a bill and note appear to be:—

That the maker of the note is the originator of and principal obligant on the instrument which cannot be made conditionally, while

The acceptor of a bill, though the principal obligant is not the creator of it, and he may accept it conditionally.

Promissory Note.

Additions.

Negotiable Abroad.

Demand.

Distinctions between Obligants on Note and Bill.

Promissory
Note.
Distinctions
between
Obligants on
Note and Bill.

The maker and the payee are immediate obligants, while

The acceptor and payee are remote obligants, where the instrument is not drawn payable to the drawer's own order.

The makers of a note may be liable jointly and severally, while

Two or more acceptors can only be liable jointly.

And we have seen that the statute of 1 and 2 Geo. IV, cap. 78, relating to accepting payable at a particular place, does not affect promissory notes.

The liability of the drawer of a bill, as compared with that of the maker of a note, is only secondary, instead of being primary, the drawer and all the indorsers being in the position of sureties, that the acceptor shall pay the bill if duly presented.

Limited use
of Note.

Though placed in the manner seen on the same footing as the bill, the promissory note, it may be added, is at present but rarely, if ever used in commercial transactions, it being confined in a measure to its original purpose, the securing of a debt out of the common course of business between private individuals. We therefore find that in personal loans, securing private debts, and paying off suretiships, it answers a very useful end.*

As regards the latter purpose, the following may be given as sometimes in use when guarantors desire time to pay off their liability to a bank :—

* By a Bank which came, after a short career, to an inglorious end a number of years ago—the Royal British Bank—a prominent use was intended to be made of the instrument, the explanation given, on their introduction, being that the notes were not meant to interfere with the currency, that they were not payable to bearer like bank notes, but to order, and that this feature, while it would prevent their use as a medium of ordinary circulation from hand to hand, was one of the characteristics which would add to their utility for their contemplated purposes of serving instead of pass books, or accounts for parties wishing to make deposits for fixed periods, for remittances abroad or to distant places, and payments at future or distant dates, preserving interest at the same time to the payer until the date of actual payment, and for deposit as guarantees of the performance of obligations, so as to supersede personal sureties or references.

Liverpool, 15th May, 1878.

We, the undersigned, jointly and severally
promise to pay to the Provincial Bank five hun-
dred pounds, without interest, at the following
dates :

On 5th June, 1878	£ 100
„ 5th December, 1878	100
„ 5th June, 1879	100
„ 5th December, 1880	100
„ 5th June, 1880	100

the said five hundred pounds being in considera-
tion of a guarantee given by A. B., on behalf of
E. F. and G. H., to the said Provincial Bank,
dated 15th January, 1869.

A. B.

C. D.

The discharge is indorsed across the note upon payment
of each of the instalments.*

* An amusing instance of happy ignorance of the nature and purposes of the promissory note is related as having occurred in the case of two German settlers in Pennsylvania, whose practical honesty in the transaction might certainly be offered as a notable reproof to many more familiarly acquainted with the instrument, or to those belonging to that class, who, with the wit, "find it their interest not to pay principal, and make it their principle not to pay interest." Karl had occasion to borrow three hundred dollars, and repaired for that purpose to his neighbour Heinrich. The latter having acceded to the request of his friend, it occurred to Karl that, in similar transactions, he had seen, or heard of, something like a note passing between the borrower and lender, and he suggested as much to Heinrich. Heinrich assenting, the necessary articles were produced, and between the two a document was concocted, bearing that Heinrich had lent to Karl three hundred dollars, which Karl would repay to Heinrich in "tree monts." This being duly signed a difficulty then presented itself. Neither could exactly tell whether it was for the borrower or lender to take charge of the instrument. This was to our financiers a grievous dilemma. At last, a brilliant idea struck Heinrich : "You have de money to pay, Karl, so you must take dis paper, so as you can see as you have to pay it." This was conclusive, the common sense of the thing appeared unanswerable, and Karl pocketed the money and his own note, "so as he could see as he haf to pay it." The three months passed over, and punctually to the day, appeared Karl, and paid over the promised sum to Heinrich. This having been accomplished, the note was then carefully produced, and handed over by Karl to his friend, with the remark : "Now, Heinrich, you must take de note, so that you can see de money haf been paid!"

BANK NOTE.

Bank Note.
Re-issuable.

Unlike the common promissory note, the bank note is re-issuable after payment. See the Stamp Act, sec. 46, ante p. 92, n. and by sec. 45, it will have been observed, a definition of the instrument is given.

Under £20.

When under £20, and made payable to bearer on demand, the note must be made payable at the place where it is issued. Other places, however, may in addition be specified for payment, but commonly the note is made payable at the place of issue, and at the agents or correspondents of the bank in London.

Distinguishing
features.

The distinguishing features of the bank note were prominently brought out in the judgment of Baron Bramwell, in the case of the Guardians of the Poor of the Lichfield Union *v.* William Greene, 1 H. and N., 884, where Richard Greene, a country banker, issuing his own notes, paid, on 28th December, £95 in his notes on orders or cheques of the plaintiffs, to whom he was treasurer, and on 31st December the sum of £200 was paid in the same way. At three o'clock on the latter day he stopped payment. Held that the defendant, the guarantor, was not liable to make good these sums of money to the plaintiffs. "It seems to be clear that a bank note," said the above learned judge, "is not to be considered, in all respects at least, as a bill of exchange or promissory note, payable at a distant date. In Miller *v.* Race, 1 Burr., 452, Lord Mansfield says bank notes 'are not goods, not securities, nor documents for debts, nor are so esteemed, but are treated as money, as cash, in the ordinary course and transaction of business, by the general consent of mankind, which gives them the credit and currency of money to all intents and purposes. They are as much money as guineas themselves are, or any other current coin that is used in common payments as money or cash.' They are 'never considered as securities for money, but as money itself. On payment of them,

whenever a receipt is required, the receipts are always given as for money, not as for securities or notes.' Bank notes are also treated of and dealt with in a variety of Acts of Parliament (the Bank Acts and others), and restrictions put upon their issue and form. In England, practically, they cannot be issued for a less sum than £5—see 17 Geo. III, cap. 30, 7 Geo. IV, cap. 6; but it is notorious that, in Scotland and Ireland, local or country £1 bank notes form the great bulk of the ordinary currency of the country, and are in universal use.<sup>Bank Note.
Distinguishing features.</sup> Bank of England notes are now a legal tender for all sums above £5, except at the Bank of England and its branches, and country bank notes are also a legal tender, unless objected to at the time on that account. (See Byles on Bills, p. 7, where the authorities are cited—p. 10 of 13th ed.) It seems, therefore, clear that bank notes are in many respects different from bills of exchange and promissory notes, ordinarily so called.^{Legal Tender.}

"The question as to the effect of payment of bank notes when the bank either has stopped at the time of the payment or shortly after, has been frequently the subject of legal discussion; and the case of *Camidge v. Allenby*, 6 B. and C., 373, seems to contain the existing law upon the subject. In that case a distinction was taken between a payment by bank notes *at the time of the sale or of the original transaction*, and a payment by bank notes of a *pre-existing debt*. Bayley, J., whose opinion upon the subject is not expressed to be to the same extent as those of Holroyd, J., or Littledale, J., says: 'If the notes had been given to the plaintiff at the time when the corn was sold, he could have had no remedy upon them against the defendant. The plaintiff might have insisted upon payment in money. But if he consented to receive the notes as money, they would have been taken by him at his peril. If, indeed, he could show fraud or knowledge of the maker's insolvency in the payer, then it would be wholly immaterial whether they were taken at the time of sale or afterwards.'

Bank Note.
Payment.

But Holroyd, J., and Littledale, J., both seem to be of opinion that if country bank notes are paid and received as money in any transaction of payment, and both parties be innocent, that it is payment. The latter learned judge expressly says that, in his opinion, ‘there is no guarantee implied by law in the party passing a note payable on demand to bearer, that the maker of the note is solvent at the time when it is so passed.’ It has been already stated what, in the opinion of Bayley, J., is the effect of payment by bank notes at the time of the transaction or sale.

“ But in the same case it is said, by the same learned judge, that if a man takes bank notes *‘in payment of a pre-existing debt’*, and the bank stops the following day, he is entitled at once to return the notes and treat them as non-payment. So, also, if he circulated them on or before the following day, and they are returned to him by a person entitled to return them, by reason of the stoppage of the bank, his right to return them to his debtor still continues.’ (See also Byles on Bills, p. 154.—p. 163, 13th ed.)

“ No case has arisen like the present, where the person paying was the maker of the bank note himself; but, as to the transaction on Friday the 28th, the case of the payer not being the maker seems to afford an analogy. If Mr. Richard Greene had paid the orders by bank notes of another bank in Lichfield which had stopped on Monday the 31st, the payment by him would have been good. According to the case of Camidge v. Allenby, the circumstance of these notes not having been presented for payment or circulated by the plaintiffs on the Saturday, would have made it a good payment by Richard Greene, and the loss would have fallen on the plaintiffs; and we think, in analogy to this, that the plaintiffs having kept in their possession during the Saturday the £95, they thereby conclusively elected to treat the orders as paid, and that the sureties have a right to treat the transaction as payment.

"The payment on Monday is obviously not within this principle, for the bank stopped payment about three o'clock of that day. But both payments—viz., that on the Friday and on the Monday—seem to be within the principle laid down by Bayley, J., in respect of payment made by bank notes at the time of the sale or transaction, unless the circumstance that the person paying was also the maker of the notes causes a difference. The liability to pay, created by the bond and condition, was to do so upon the orders being presented for payment. Immediately upon being presented they were paid, and therefore, according to the above principle, the bank notes were taken at the peril of the plaintiff, and we think the circumstance of *Mr. Richard Greene being the maker is immaterial*, for the plaintiffs have the right to prove against his estate to the amount of the notes, the same as the amount paid; and we are of opinion that the obligation of the defendant being that Richard Greene should, upon the presentment of the orders, pay them, when the plaintiffs, who were entitled to insist upon receiving sovereigns or Bank of England notes, thought fit to receive the bank notes, that the obligation of the defendant was thereby satisfied and discharged."

No bank can issue any bill or note payable to bearer on demand in the United Kingdom but the Bank of England, and those banks lawfully issuing such instruments on 6th May, 1844.

By 9 Geo. IV, cap. 65, the issue or negotiation in England of any note for less than £5, payable to bearer on demand, made or issued, or purporting to be made or issued, in Scotland or Ireland, or elsewhere out of England, is prohibited.

A remitter sending notes in halves does not part with the property in the notes until he has sent the second halves, and he may accordingly reclaim the first halves already sent. Smith *v.* Mundy, 29 L. J., Q. B. 172.

Bank Note.
Payment.

Bank Note.
Stop.

It may be added that, when found necessary to stop the payment of a Bank of England note, the course of the Bank of England appears to be to make a record of the intimation, for which a fee of 2*s.* 6*d.* is exacted, and on the presentation of the note, if they are not satisfied with the answers received from the presenter of it, they detain it, as well as, in some cases, the presenter himself, until the necessary communications are had with the party stopping its payment; but, if the note comes to them in a legitimate way or through proper business channels, they at once pay it, giving due advice of the circumstance, stating to whom the amount has been paid, and leaving the party stopping payment to follow up the matter in his own way.

With the distinctions seen, the bank note is subject to the same rules as the bill of exchange and ordinary promissory note.*

CIRCULAR NOTE.

Circular Note. Purpose. This instrument is of comparatively recent origin, and is specially framed for the use of parties travelling abroad, to whom it is of great utility, as supplying the place of actual money without the hazard and inconvenience attending the latter when borne about the person in large sums.

It is issued by some of the joint-stock and private banks of London, and in the country is procurable through the provincial banker. As most of these issuing banks have agents in almost every town in Europe and in all the principal commercial cities of the world, the traveller can rarely be at a loss, however much he may vary his route.

* There have been disentombed in Lower Chaldea terra-cotta tablets, supposed to have been used as a circulating medium throughout Babylonia some 700 or 800 years before the Christian era. They bear an acknowledgment of liability for certain amounts of gold and silver, and have impressed upon them the period of issue, consisting of the day, month, and year of the sovereign's reign. They seem to have been issued by order of the King, and to have been attested by the great officers of State, and upon some of them have been discovered the royal names of Nabopolassar, Nobonidus, Cyrus, and Cambyses.

The form of the instrument varies, as thus :—

Circular Note
Forms.

Bank of ,
 London, 7 Aout, 1879.
 Pour £10 Sterling.
 No. 18645.
 Aux Correspondans
 De la Bank of
 Messieurs,
 Un credit de la somme de DIX Livres
 Sterling a été ouvert par la Bank of en
 faveur de Monsieur Edward Joceline, dont vous
 trouverez la signature dans notre lettre d'Ordre
 Generale No. 520, dont il est le porteur. Veuillez
 je vous prie lui payer au cours d'usage sur
 Londres, sans frais quelconques, le montant du
 credit susdit, contre sa traite ci-incluse sur cette
 Banque.

J'ai l'honneur,
 De vous saluer bien sincérement,
 A. B., Contrôleur.
 C. D., Caissier Principal.

Upon the back of this is the blank form of a draft or bill upon the bank, which is filled up and signed by the nominee or party in whose favour the letter is drawn when he receives the amount from the foreign agent, thus :—

A Dusseldorf,
 2 Septbre, 1879.
 £10 Sterling.

A sept jours de vue prefix payez a l'ordre de
 Monsieur Guillme. Lhéton Renaudot, la somme
 de Dix Livres Sterling, que passerez en compte.

EDWARD JOCELINE.
 A
 A. B., Esq.,
 Le Contrôleur, Bank of ,
 London.

Circular Note.
Forms.

And, when thus completed, the instrument may be negotiated through various hands.*

The more ordinary form is:—

London, 15 Aout, 1879.

No. 15684.

Billet de Change Circulaire.

Pour £20 Sterling.

A sept jours de vuë prefix nous payerons, ou ferons payer, par nos correspondans aux diverses places marquées dans nos Lettres d'Indication, à l'ordre de Monsieur Edward Joceline, la valeur de Vingt Livres Sterling, au cours à usance sur Londres, sans frais quelconques, valeur reçue comptant.

For the Bank of ,

A. B.. Contrôleur.

C. D., Caissier Principal.

A Messieurs

Messieurs les Banquiers,

Designés dans nos

Lettres d'Indication Susdites.

* The following is the form of the circular note issued by the London and Westminster Bank :—

LONDON AND WESTMINSTER BANK.

No. .

Lettre de Credit Circulaire.

Pour £ Sterls.

London, ce , 18

A Messieurs les Banquiers

Designés dans nos Lettres d'Indication.

Messieurs,

Cette Lettre vous sera remise par M dont vous trouverez la signature dans notre Lettre d'Indication susdite. Je vous prie de vouloir bien lui compter sans frais quelconques, la valeur de Livres Sterlins, au cours à usance sur Londres contre sa traite ci-jointe sur cette Banque.

J'ai l'honneur d'etre,

Messieurs,

Votre tres obeissant Serviteur,

....., Secrétaire.

....., Gérant.

Indorsed :

London and Westminster Bank,

London,

£ A sept jours de vuë prefix payez a l'ordre de M ,
Livres Sterlins, valeur reçue.

à
ce , 18 .

From the terms of the instrument, it will be observed that a separate document, called a "letter of indication," or, as in the first form, a "general order," is necessary to be exhibited before the amount is received from the foreign agent or correspondent. This is a letter containing certain instructions to the bank's correspondents, with a blank space for the insertion of the ordinary signature of the nomine, and, following the letter, is a detailed list of all the correspondents upon whom the bank draws, and from any of whom cash may be received upon presentation of the instruments.

Circular Note.
Letter of
Indication.

The letter is generally in this form :—

Lettre d'Indication.

Bank of ,

London, le 15 Aout, 1879.

Messieurs,

Le porteur de cette lettre, M pour lequel nous réclamons vos attentions, est muni de nos billets de change circulaires pour son voyage. Nous vous prions de lui en fournir la valeur sur son double acquit au cours du change à usance sur notre place, et sans déductions de frais d'après nos instructions.

Si la ville ou il en touchera le montant n'a pas de change direct sur Londres vous voudrez bien en combiner un avec la Place Cambiste la plus voisine.

Vous observerez que tout agio sur espèces d'or, ou d'argent, et tous frais extraordinaires dans le cas d'un remboursement indirect, doivent être supportés par le porteur, et ne peuvent être à notre charge.

Cette lettre devant accompagner nos Billets Circulaires doit rester dans les mains de leur porteur jusqu'à leur épuisement.

Nous avons l'honneur d'être, Messieurs,

Vos très humble et très obeissant Serviteurs,

A. B., Contrôleur.

C. D., Caissier Principal.

Circular Note.
Letter of
Indication.

Then, under the respective heads "Villes," "Correspondans," follows the address of the various foreign correspondents, and on the back of the letter is the inscription :—

Lettre d'Indication,
Pour les Billets de Change Circulaires,
De la Bank of ,
London.

On issuing the above, the bank, by a notice attached to Precautions. the letter, enjoins the bearer, as a precaution against forgery in the event of the notes falling into improper hands, to insert his usual signature in the blank space in the first line, before setting out on his journey. A caution is likewise given to him to be careful to keep the letter apart from the notes, and to be particular in filling up the blank spaces of the bill on the back of the note, at the place of payment, and that until then his signature should not be attached to that instrument.

Amount. The amount of the circular note varies, though, in consequence of successful alterations to largely increased sums, some of the issuing banks have, we believe, limited the amount of each note issued by them to £10 only, so that any presented beyond that amount may not be paid by their agents or correspondents.

Limited Note. To travellers desirous of having a credit at one or two specified places merely, the form is sometimes thus :—

Bank of ,
London, le 15 Septembre, 1879.
Messieurs,

Cette lettre vous sera présentée par notre ami Monsieur Arthur Merchiston pour qui nous réclamons vos attentions obligeantes, vous priant de lui fournir telle somme d'argent dont il pourra avoir besoin, jusqu'à la concurrence de Quarante Livres Sterlins, contre ses traites sur notre maison a trois jours de vue, ou à usance, auxquelles nous

réservons tout accueil, mais vous voudrez bien nous libérer de tous frais, et marquer sur le recto de l'autre moitié, de cette feuille le montant de ces paiemens.

Circular Note.
Limited.

Cette lettre de credit pour £40 Sterlins, sera valable pendant trois mois. L'identité de Monsieur Merchiston sera établie par son passeport.

Agreez Messieurs l'assurance de notre considération distinguée.

A. B., Contrôleur.

C. D., Caissier Principal.

Messrs. ,

Banquiers à

Messrs. ,

Banquiers à

On the issue of the circular note, the money given in exchange for it passes at once to the banker as his absolute property. The amount cannot, therefore, be regarded in the light of a simple deposit, attachable in the hands of the banker by the creditors of the nominee any time before acceptance. Were it so, the use of the circular note would cease, as no one abroad would advance upon it.*

Position of
Issuer.

Should, however, any of the circular notes not be used, they will, on their return to the issuing banker, be repaid, and, in the event of their loss or destruction, a satisfactory indemnity must be given before repayment can be obtained. The Conflans Quarry Company *v.* Parker, L. R. 3, C. P. 1.

Repayment.

The circular note is subject to the stamp duty on foreign bills.†

Stamp.

* In a case determined at Guildhall, in March, 1853, the jury found that the money given for the instrument passed absolutely to the issuers of it; that it simultaneously ceased to be the nominee's, and, consequently, was not attachable.

† While travelling abroad, the Englishman may, it appears, sometimes stand independent of such adventitious aid as that derived from the circular note. Major Keppel, in his Travels in Babylonia, Assyria, etc., relates, v. 2, p. 106, that on arriving at Hamadan, one of his party, being desirous to draw a bill upon Bagdad for 100 tomauns, sent into the town to see whether any of the shraufs or merchants would be willing to give him money for it. After a

MINORS.

Minors. Formerly there existed great uncertainty as to the liability of an infant, and much litigation occurred in connection with the contracts formed by him. For necessaries, these depending upon the circumstances of each case, he could be made responsible; but with respect to his other contracts, which were divided into void and voidable, there was much contention, the distinction between the two having not been at all clear or well defined.

With reference to his obligation on a bill or note, from holding that no acknowledgment simply, or part payment, on an infant attaining full age, would create responsibility, the Courts latterly seemed disposed to extend his liability, and it was held that such could be established by ratification after majority. But by 9 Geo. IV, cap. 14, it was enacted that a ratification to bind must be written.

Under present Law. Now, by the Infants' Relief Act of 1874, already referred to, ante p. 23, we have seen, by section second, that no action can be brought on ratification of an infant's contract. And by the other section of the Act, section first, it is enacted that "all contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for

short time one of these appeared, and, though of somewhat miserable exterior, at once offered to advance any sum that might be required. The draft was then written out in English, and the money paid without any question being put, further than as to the name of the party upon whom the order was drawn. "While we were wondering," adds the Major, "both at his ability to serve us, and his confidence in our honesty (for we could easily have deceived him), he said he had had too many proofs of English probity to entertain any alarm on that head: 'The Feringhees (or Franks, a term applied in Persia to all Europeans but ourselves) are not so worthy of being trusted, but the Ingreez (Englishmen) have never been known to deceive.'" Without casting an imputation upon the character of the Americans, it may be added that they are known in the East as "Feringhee dooneau noo," or "Franks of the New World." So great is the reputation of the English name, arising from the integrity and honour of English travellers (officers of the Army and Navy, the learned and scientific, and missionaries of the Gospel), that throughout Persia it has become a proverb that "an Englishman is never guilty of a lie." It is to be hoped that the events of recent years have not altered all this.

necessaries), and all accounts stated with infants, shall be absolutely void : provided always that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable."

Minors.
Under present
Law.

In *ex parte Kibble, re Onslow* on appeal, 11th March, 1875, Onslow gave a bill during his minority, and before the passing of the Act. After the Act passed, the bill matured. Onslow attained majority, and the holder obtained judgment by default. Held that as the debt, by the operation of the second section of the Act, could not be ratified, there was no valid consideration for the judgment, and a petition for adjudication, founded on the judgment, was accordingly dismissed.*

MARRIED WOMEN.

A married woman also incurs no liability on a bill, unless she has separate estate, or is a sole trader by the custom of the city of London, or her husband be an alien enemy, or civiliter mortuus, or has been abroad, and not heard of for seven years, when the legal presumption is that he is dead.

Married Women.

Liability.

An instrument payable to her order must be indorsed by her husband, unless the amount be her separate property, and on this point, in *Green v. Carlill*, where a wife received a banker's draft in her favour for the amount of a legacy left to her separate use, and she indorsed and handed it

Indorsation.

* With reference to infants, Byles says, 13th ed., 59 :—“ An infant can make a binding contract for necessities only, and he may give a *single bill* (which is a bond without a penalty) for the exact sum due for necessities, but not a bond with a penalty, or carrying interest.”

And at pages 61 and 62 he says: “ It is conceived that a bill drawn, indorsed, or accepted in blank by an infant, and filled up without his express consent after he is of full age, would not bind him. Whether a promissory note given by an infant for necessities be valid, either at the suit of the original payee or his indorsee, has never been expressly decided, but it should seem it is not, for, even if not transferable, it carries interest. Where an infant is not liable on a contract, he cannot be made liable thereon by suing him in an action in *form ex delicto*. Thus he is not liable on a bill because he represented himself to be of full age, nor could the plaintiff reply that fact on equitable grounds.”

Married
Women.
Indorsation.

over to her husband, and his bankers received the amount, and placed it, by his direction, to his deposit account, and he died suddenly a few days after, and, there being evidence that she did not intend to give the draft to her husband, it was held, in an action against his executors, that she was entitled to be paid the amount. L. R., 4 Ch. D. 882, 46 L. J., Ch. 477. And a married woman may draw and indorse as the agent of her husband.

Whether the bill be payable to a woman before or after her marriage, the husband, unless it be her separate property, is to be deemed the holder, and he may indorse it in his own name alone, but should he die without having reduced it into his possession, the title to it will revert to his wife if she be alive, or to her personal representatives if she has predeceased him. Hart *v.* Stevens, 6 Q. B. 937, S. C., Mason *v.* Morgan, 2 Ad. and Ellis 30, 4 Nev. and M. 46, S. C., and other cases.* And in Parker *v.* Lechmere, 17th June, 1879, a wife had a legacy paid to her by cheque drawn in favour of her husband and herself, and they went to the husband's bankers with the cheque duly indorsed, and the wife handed it to the manager, and instructed him in the husband's presence, and with his assent, to open an account in her own sole name, and to place part of the proceeds of the cheque to the credit of such account, and the remainder to the husband's current account. These instructions were complied with, and the wife drew cheques on her account, in several instances in favour of her husband, who never interfered with the account. The wife afterwards declined to accede to a request by her husband to charge her moneys with the payment of the overdrawn balance of his account with the bankers, and the husband went into

Reduction into
Possession.

* Byles says, 13th ed., 67, that the husband's indorsement is effectual "though the instrument be part of her separate estate, and be indorsed by her husband in fraud of her, to an innocent holder for value. Dawson *v.* Prince, 27 L. J., Chan. 169." And he adds "Quære, whether the fact of a bill being drawn in favour of a married woman be notice, actual or constructive, that it is part of her separate estate; this presumption is, perhaps, stronger since the passing of the Married Women's Property Act, 1870."

liquidation. It was held that the husband had not reduced the legacy into possession, and in concluding his judgment, Fry, J., said : "Was the money at any moment of time in the actual possession of the husband, or under his sole control ? I think it was not. It is true that the original cheque could only be received by husband and wife, but the husband indorsed it, and it was then presented by the wife alone to Lechmere & Co., and the money thereupon became a chose in action of the wife. I hold therefore that there was no reduction into possession by the husband. *Even if there had been a reduction into possession, I should probably have held that there had been a gift of the money by the husband to the wife.* I think that Mews v. Mews, 15 Beav. 529, is in favour of that view, but it is not necessary that I should express a decided opinion on this point. I give judgment for the plaintiff in the terms of her claim." 28, W. R. 48.*

Married
Women.

Reduction into
Possession.

CLERGymEN.

Although restrained from trading under penalties, clergymen may bind themselves by bills or notes.

Clergymen.

CORPORATIONS OR JOINT-STOCK COMPANIES.

We have seen that, unless expressly or impliedly empowered by its articles of association, a corporation cannot bind itself on bills or notes. And as to bills or notes by corporations, without the capacity to so contract, and bills or notes by non-trading partnerships, there is this

Corporations.

* For the general law affecting minors and married women, previous to the recent changes, the Bankers' Magazine, V. 28, p. 1048, Oct. 1868, and subsequent numbers, may be consulted, and to the interrupted contributions, in which a considerable portion of the present volume may be considered as the sequel. At pages 431 et seq. of Vol. 29 of the Magazine, will be found detailed information respecting the custom of the city of London, to which we have already, more than once, adverted.

Corporations.

distinction, that in the former case they are incurably bad, as a contract ultra vires of a corporation cannot be ratified, while in the latter they may be adopted by the partnership.

Though not liable, from want of capacity, on a bill, the indorsement of a joint-stock company may, however, pass the property in the instrument. *Smith v. Johnson*, 27 L. J., Exch. 363, 3 H. and N., 222 S. C.

Drawer.
Blank.Drawing on
himself.Several
Drawers.

Reference.

Liability.

Acceptor.

DRAWER.—Until the drawer signs, the bill is imperfect and without effect, and should he sign a blank bill he will be bound for any amount that may be inserted consistent with the stamp laws. If he address the bill to himself, or the drawee be a fictitious person, the instrument may be considered as rather a note than a bill. And a draft drawn by a bank in one place on the same bank in another place may be treated by the holder as a note. *Miller v. Thomson*, 11 L. J., 21.

If there be more than one drawer, each must sign his name separately, unless the drawers be a firm, when the signature of the firm will be sufficient.

As in the case of the foreign bill, the drawer, should he entertain any doubt about the bill being duly met, may make reference on the instrument to a banker or third party for honour. This, however, is now very rarely done in connection with the inland bill, the drawer, when he finds that the acceptor cannot pay, being in the habit of requesting his banker to retire the instrument at maturity.

By his engagement, the drawer undertakes to see that the bill is duly honoured by the drawee, and as soon as it is delivered to the payee the obligation of the drawer becomes complete, and irrevocable to him as well as to every other bona fide holder, at least so long as they adhere to the rules in connection with the instrument.

ACCEPTOR.—The address of the drawee, who becomes acceptor when he accepts, should be given at full length at the place indicated in the forms already presented. On

accepting, the acceptor enters into a specific engagement to pay the bill when due, and his liability remains complete until payment or release; in the latter case, however, he should see that the bill is cancelled, as the drawer, after release, may, before the bill is due, pay it away, and subject the acceptor to an action from a bona fide holder. *Dod v. Edwards*, 2 C. and P., 602. The acceptor may, also, be discharged by material alterations made on the bill without his consent, such as in the date, or sum, or currency, or in the place of acceptance.

Before actually parting with the bill, the drawee, however, may revoke his acceptance, and thereby relieve himself from liability. *Bank of Van Diemen's Land v. Bank of Victoria*, L. R., 3 P. C., 526. *Cox v. Troy*, 5, B. and Ald., 474, overruling other cases, which held that an acceptance once written could not be revoked; and, if it is the fault of the holder, it does not matter if the bill has been left with the drawee beyond the usual time. *Bayley* 207.

The ordinary custom in procuring acceptance is to leave the bill for 24 hours—i.e., business hours—with the drawee, and this practice was recognized and sanctioned in the case of the *Bank of Van Diemen's Land v. Bank of Victoria* supra. After he has once delivered the instrument, the acceptor cannot revoke his acceptance, even with consent of the holder, as the drawer and indorsers are interested. *Marius* 20, 1, *Pardessus* 400.

In several instances bills on petty traders or the smaller class of provincial retail dealers have come into our hands with the acceptance written on the back of the instrument, there being written across its face by the drawer, "see acceptance on back." Though of course, wholly irregular such an acceptance is in practice, considered valid; and in law we find it clearly established, that an indorsement may be made on the face of the bill. *Per Cur.* in *Yarborough v. Bank of England*, 16 East, 12, *Rex v. Bigg*, 1 Stra. 18, *Chitty*, 8th ed., 253.

Acceptor.
Liability.

Release.

Revocation.

Acceptance
Indorsed.

Acceptor.
Blank.

A bill may be accepted, before it is drawn, by the drawee writing his name on a blank stamp. *Molloy v. Delves*, 4 C. and P., 492. When an acceptance is made, subsequently to the drawing, it admits the drawing but not the indorsing. If the acceptance, however, be in blank, or made before the drawing, with the intention of the bill being negotiated, and the bill is afterwards completed by the addition of the signature of a drawer and indorser, the acceptor cannot, as against a bona fide indorsee for value, adduce evidence to shew that either the drawing, or indorsement is a forgery. *London and South Western Bank v. Wentworth*, 1st March, 1880.*

* In this case the facts, as given in the judgment, were as follow:—The plaintiffs sued as indorsees of a bill of exchange for £500, alleged to be drawn by “S. H. Head” upon the defendant, accepted by the defendant, and indorsed by “S. H. Head” to the plaintiffs. At the trial the plaintiffs proved, by their manager, that the bill had been brought to them by one Villars, who was senior partner of a well-known firm of upholsterers, who had an account with the plaintiffs, and who had, on former occasions, brought to them trade bills to cover advances; that the bill was drawn and indorsed in the name of “S. H. Head” in the same handwriting, and accepted by the defendant; that the manager, after making inquiries at the defendant’s bankers, and receiving a satisfactory reply, made an advance equal to the full value of the bill. Villars stated that his firm had furnished one Samuel Head’s offices, and it was admitted that the plaintiffs took the bill in good faith, and without notice of any irregularity. On the part of the defendant, he himself was called, and proved that being in want of money, he applied to an advertising money lender, calling himself Tillotson Smith, who undertook to obtain for him a loan of £400 upon his giving a bill for £500, and that upon the faith of this, he gave to Smith a piece of paper, bearing a sufficient stamp, with his, the defendant’s signature across it, where acceptances are usually written; nothing was said as to who should draw or indorse the bill, but the person calling himself Tillotson Smith gave to the defendant a receipt as follows:—“12th March, 1878,—Received of Captain W. D. Wentworth, an acceptance for £500, dated to-day, for the purpose of negotiation, and if not discounted by the 14th instant, to be returned at once. Tillotson Smith & Co.” Mr. Samuel Heath Head proved that he was a solicitor, having offices in the same house as Tillotson Smith & Co. He was then asked whether the indorsement of the bill was in his handwriting, but the question was objected to upon the ground that it was immaterial.

In the course of the judgment Baron Pollock observed, “the plaintiffs gave value for the bill, had no notice of fraud, and the forgery was no part of the transaction whereby they acquired the bill; they made all the inquiries as to the acceptor, from his own banker, that could be demanded from the most prudent persons. To require more of them, and say that they ought to have unravelled all the history of the bill, its drawing and indorsement, would be to create a new burden, and cast a new duty upon indorsees of bills of exchange, for which there is no precedent, and which would go far to hamper their negotiability, and destroy their usefulness. Moreover, it would graft an exception upon a system of law which has worked well, and is of great public use, for the benefit of one who has brought about the difficulty by his own irregular act. It may be said that this course of reasoning would apply to the

Where a bill is accepted without the drawer's name being on it, any bona fide holder for value is entitled to insert his own name as drawer, and to sue the acceptor for the amount of the bill. *Harvey v. Cane*, C. P. Dow., 2nd February, 1876.

A drawee may also accept after the bill is overdue, in which case it will be payable on demand. *Mutford v. Walcot*, 1 Ld. Raym. 574.

He may also accept after a previous refusal. *Wynne v. Raikes*, 5 East., 514, 2 Smith, 89, S. C.; and, when thus subsequently accepted, it is the practice, in bills payable after sight, to antedate the acceptance to the day on which the instrument was first presented.

If a bill be drawn upon several persons not in partnership it should be accepted by all, and if not, may be treated as dishonoured. Acceptance will, however, be binding upon such as accept. *Byles*, 6th ed., 144.

The direction to the drawee and the acceptance will be taken together—thus, where a bill was directed to W. Charles, personally, for value, to the adventurers in

case of a bill drawn and accepted in due course, and indorsed by a forgery of the drawer's name, in which case the acceptor would not be liable, even to a bona fide holder, for value, but the two cases are not in pari materia. In the case last put, the drawing and accepting of the bill is in proper order, and the acceptor is entitled to say, ‘I accepted on the faith of the bill being drawn by a person of credit, and I am ready to pay to his order, but not to the holder of a forged indorsement.’ In such a case the whole matter quoad the acceptor is real, and depends upon a real authority. In the present case the defendant is in default from the beginning by giving a blank acceptance, and therefore, as is admitted in the cases of a drawing by a stranger, or in a fictitious name, the ordinary rule, as to authority, cannot be adhered to, and something like a fiction must be resorted to in favour of a bona fide indorsee for value, or, as I should prefer to say, the law merchant in such a case holds that, although the acceptor did not authorize the drawer's name to be used, he enabled the person to whom he gave the bill to use it, and so to give the bill currency, and this as against the acceptor is sufficient to render him liable. Further, where an indorsement is forged there is a material distinction between the case of a bill drawn by a real person, and one like that now under consideration, which materially affects the rights of the parties. Where the bill is drawn by a real person, not only have those who claim under a forged indorsement no title to the bill, but the title is in some one else who is entitled to have the bill restored to him and to sue upon it, and to this action a plea of payment, to the man who claims under the forgery, would be no defence. In the present case there is no real drawer, and the defendant could have paid the plaintiffs without the risk of having to pay it a second time to another.”

Acceptor.
Agents.

Hayter and Holme Moor Mines and accepted thus, "Accepted for the Companies, etc., W. Charles, Purser," this was held to create a personal liability. And in the case of a bill drawn for the amount of a fire policy, and directed to "Henry Connah, General Agent, of L'Unione Compagna D'Assicurazione Generale (Firenze), 8, York Street, Manchester," and accepted thus, "Accepted payable at 8, York Street, Manchester, on behalf of the Company, H. Connah," it was held, in an action against him, that he was personally liable as acceptor. *Herald v. Connah, Ex. Div. 34, L. T. 885.*

Admission.

By his acceptance, the drawee admits the ability and signature of the drawer, but not those of an indorser, though the indorsement be on the bill at the time of acceptance. *Smith v. Chester, 1 T. R., 654;* and see *London and South-Western Bank v. Wentworth, ante p. 174.* If the bill be payable to the drawer's order, the acceptance admits only the signature as drawer, and not that as indorser, though it may admit the ability of the drawer to indorse. *Taylor v. Croker, 4 Esp., 187,* and other cases. If the bill be drawn and indorsed by procuration, the acceptance admits only the former procuration, not the latter. *Robinson v. Yarrow, 7 Taunt., 455,* being an action by the indorsee against the acceptor of a bill importing to be drawn by Henry, "per pro Chas. Stachen and Co.," payable to their order, and to be indorsed by Henry, per procuration of Chas. Stachen & Co. Plaintiff proved the acceptance, but he did not prove Henry's signature to the indorsement, nor his authority to indorse, upon which Mr. Justice Burrough, before whom the case was tried, directed a verdict for defendant. On a rule nisi for new trial, and cause shewn, the Court held the acceptance, admitted Henry's authority to draw, and his signature as drawer, but that it was no admission of his authority to indorse, or of his indorsement; for the drawing and indorsing would have contrary effects, the one would

bring the amount to Stachen & Co., the latter would carry it from them. Rule discharged.* Acceptor.

There are three methods by which the bill may be accepted. In the first form given, ante p. 134, the bill is accepted "generally," as it is called, and, when due, it must be presented to the acceptors. In the other or second form, the acceptance is made payable at the acceptors bankers, in London; but it has been enacted, by 1 and 2 Geo. IV, cap. 78, sec. 1, that this likewise is a "general" acceptance, and the bill, when at maturity, may be presented, at the option of the holder, either to the acceptor himself, or to his London bankers, presentation at either being held sufficient. This was found in the cases of *Selby v. Eden*, 3 Bing., 611, and *Fayle v. Bird*, 6 B. and C., 531. By the later decision, in *Gibb v. Mather*, 8 Bing., 228, these two cases, however, have been overruled, in so far that, if a bill be *drawn* payable at a particular place, as "in London," and accepted payable there, presentment there must be averred and proved in an action against the *drawer*. Thirdly, when the acceptor wishes the presentation to be confined to his bankers, he must, according to statute, add after the domicile (in the above instance, "at the Bank of England, London") the words, "only, and not otherwise or elsewhere," or, as is more briefly expressed in practice, the words, "and there only," in which case "such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill, except, in default of payment, when such payment shall have been first duly demanded at such bank or other place." Sec. 1 of 1 and

Qualified
Acceptance.

* In one or two instances the contrary doctrine has been held, it having been the opinion of Lord Ellenborough, in *Jones v. Radford*, 1 Camp. 83, that an acceptance made after the indorsement of a payee admits the regularity of that indorsement; and more lately, in the case of the Pelican Assurance Company *v. Robarts*, Court of Queen's Bench, Hilary Term, 29th January, 1849, Mr. Justice Pattison thought that, in bills payable to order, an acceptance should be held as an admission of the authenticity of any indorsements that may have been already made. The doctrine, as stated in the text, appears, however, to be the correct one.

Acceptor.
Qualified
Acceptance.

2 Geo. IV, cap. 78. The acceptor, however, will not be released on the ground that presentment was not duly made at maturity, when he does not aver that the contents of the bill were thereby lost, though if he did, it is conceived, the result would be different. See Rhodes *v.* Gent., 5 B. and Ald., 244. An acceptance payable at a particular place, "and not elsewhere," but omitting the word "only," has been held a qualified acceptance. Siggers *v.* Nichols, Q. B., H. T., 1839; 3 Jurist, 34 S. C.

Constitution
of Acceptance.

As to the constitution of acceptance, it is enacted, by sec. 5 of the 3 and 4 Anne, cap. 9, that no acceptance of any inland bill shall be sufficient to charge any person, unless it be underwritten or indorsed in writing on the bill. But so loosely is this statute framed, that it was held that, notwithstanding these words, a verbal acceptance was binding. Lumley *v.* Palmer, 2 Str., 1000. To rectify this imperfection, as it was considered a matter of regret that anything apart from an acceptance on the bill itself should be taken as an acceptance, the 1 and 2 Geo. IV, cap. 78, was passed, confining the acceptance of an inland bill to a writing on the instrument itself. Under this statute, however, it was held that an acceptance might be constituted, even without the signature of the acceptor, by his merely writing on the bill "accepted," or "seen," or "presented," or by his writing upon it the day of the month, or a direction to a third person to pay the instrument. Anon. Comb. 401, Powell *v.* Monnier, 1 Atk. 611, Moor *v.* Whitby, Bul., N. P. 270, Dufaur *v.* Oxenden, 1 M. and R. 90. From the objections open to such a mode of acceptance, it need hardly be observed that it formed no part of the banker's practice to receive bills accepted in this irregular shape. Now, by the "Mercantile Law Amendment Act," 19 and 20 Vic., cap. 97, passed 29th July, 1856, the signature is rendered essential, the enacting clause, putting likewise, for the first time, the foreign bill upon the same footing as the inland bill with regard to the

acceptance, being to this effect: "No acceptance of any bill of exchange, whether inland or foreign, made after 31st December, 1856, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or if there be more than one part of such bill on one of the said parts, and signed by the acceptor, or some person duly authorized by him." Sec. 6.

By the case, however, of *Hindhaugh v. Blakey*, on appeal, 2nd March, 1878, C. P. Div., it was held that a drawee signing his name only on a bill, without adding the word "accepted," was not liable as an acceptor within the statute. And it will also be observed that the terms of the statutes require the acceptance to be in writing. In the face of the innumerable bills in circulation accepted merely by the signature of the drawee, and the many instances, particularly in connection with the foreign bill, in which the word "accepted," when used, is stamped instead of written, this decision had naturally a very startling effect, and an amending Act was immediately passed, having received the Royal assent in the following month, 16th April; and by it, the 41 and 42 Vic., cap. 13, called the "Bills of Exchange Act, 1878," it is enacted that "an acceptance of a bill of exchange is not, and shall not be, deemed to be insufficient, under the provisions of the said statute, by reason only that such acceptance consists merely of the signature of the drawee written on such bill."

If the bill be drawn after sight, there will be no objection to the date of the presentment being written in a different hand from that of the drawee. *Glossop v. Jacob*, 4 Camp. 227, 1 Stark. 70.

Should the bill be accepted different from the address, but the drawee and acceptor be really the same person, the mistake will not invalidate the bill. To maintain an action in such a case, it would be necessary to give evidence of identity. If the party accepting be different from the drawee, however, his acceptance would be invalid, as no

Acceptor.

Conditional
Acceptance.

other than the drawee can accept, unless for honour. Davis *v.* Clark, 1 C. and K. 177.

Though a bill cannot be drawn payable on a contingency, it may be accepted conditionally by the drawee, and the distinction seems to be one in principle, "for," it has been said, "although the acceptance should be conditional, the radical obligation is still absolute, since the drawer is bound, at all events, to make payment to the holder; whereas, if a note be granted, or a bill *drawn* conditionally, the whole obligation will be contingent, because the acceptance follows the tenor of the draft. But it is the contingency of the whole obligation which is inconsistent with the nature of bills. There is no such inconsistency in the contingent apportionment of the obligation between the drawer and acceptor, provided the former is liable, at all events."—Thomson on the Law of Bills in Scotland, p. 376. A holder, however, is not bound to receive such an acceptance, or one in any respect varying from the tenor of the bill. If he resolve to reject it, he may note the instrument, and should give notice of dishonour to the previous obligants. If he is willing to receive it, he ought to give immediate notice of the nature of the acceptance to all the parties, stating, at the same time, his willingness to agree to it, if they will assent. And it is observed by Chitty, in his treatise on the Law of Bills, 8th ed., 329, that "it should seem that the holder ought in all cases (excepting, perhaps, in the instance of an offer to accept absolutely for *part of the amount*) to communicate to all the parties the drawee's offer, and obtain their consent before he agrees to take a conditional or varying acceptance, or he may discharge them from liability. There does not appear to be any direct reported decision to this effect; but it should seem that a holder cannot assent to the acceptor imposing, by his varying acceptance, different terms on the drawer or indorsers, and yet hold them liable, according to the terms of the bill."

Of conditional acceptances, the following, amongst others, have been held such : "To pay when in cash for the cargo of the ship *Thetis*," Julian *v.* Shobrooke, 2 Wils., 9 ; "to pay when goods consigned are sold," Smith *v.* Abbott, 2 Stra., 1152 ; and "to pay as remitted for," Banbury *v.* Lissett, 2 Stra., 1211. As soon as its conditions are performed, the conditional acceptance becomes, of course, absolute.

On the point of an acceptance made payable by the acceptor at a place different from his address, Chitty says, p. 330 : "Before the late Act, 1 and 2 Geo. IV, cap. 78, as to the receiving an acceptance, payable at a particular place, some judges held that, if a bill be drawn by a person resident in a town on another person resident in the same town, and payable generally, a holder could not, without the drawer's consent, receive an acceptance payable at a distant place, because, though it might not have the effect of prolonging the time of payment, yet it cast upon the drawer and indorser, if the bill were returned to and taken up by him, an additional burthen of proving a presentment at the particular place, and also prolonged, by at least a day, the receipt of the notice of dishonour." And it might perhaps have been also urged that, when the drawer has not required payment to be made at the particular place named, his position with the acceptor should not be rendered worse, as it would be in the event of the failure of the money-holder, and the inability of the acceptor to repeat the payment. And that, moreover, it is often the wish of the drawer that some portion of his bills should not be sent into general circulation, and, depending upon his banker only circulating bills that are *drawn* payable in London (the place where bills are for the most part made payable), he omits this requisition, in the expectation that the instrument will not be accepted payable otherwise than at the drawee's address, and that it will, consequently, be held merely for collection. But, it might be answered, the

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drawer, if such be his wish, should, by special terms in the bill, confine the payment of it to the drawee's address, and thus prevent all uncertainty.

However, if a bill be not drawn payable at a specified place, and the acceptor accept, payable at a place other than his address, it has been decided that, to charge an indorser, presentment at the place named in the acceptance is necessary. *Saul v. Jones*, 9th November, 1858, 1 E. and E., 59, where, plaintiff having presented at maturity the bill at the address, and not at the place named in the acceptance, it was held that he could not sue defendant, an indorser, on the bill, the presentment being insufficient, stat. 1 and 2 Geo. IV, cap. 78, putting an end to the necessity of presentment at the place named in the acceptance as *against the acceptor only*.*

* From the evidence it appeared that the plaintiff did not present the bill to the bankers, with whom it was accepted payable, within business hours, on the day when it became due, but that he presented it at the address of the acceptor. The house was shut up, and nothing was known of the acceptor at two or three houses in the neighbourhood, where the plaintiff inquired after him; and, on the day after the bill became due, the plaintiff presented it at the banker's, but it was refused payment, on the ground that there were no effects there.

In their judgments, Lord Campbell, C. J., said: "The question arises whether the acceptance, having been made payable at a banker's, a presentment at the residence named in the address was sufficient. I think it was not. The contract of the indorser is, that he will pay the bill if the acceptor does not perform the contract on his acceptance. Now, such an acceptance as this was a special acceptance before stat. 1 and 2 Geo. IV, cap. 78; and as, between drawer and indorsee, the statute leaves it a special acceptance still."

Wightman, J., said: "It is first said that the holder, as against the indorser, was not bound to present at the place mentioned by the acceptor, but that it was sufficient to present it at the acceptor's address, named by the drawer. Before the case of *Rowe v. Young* (2 Bligh, 391 S. C., 2 Br. and B., 165, in Dom. Proc., reversing the judgment of the Court of King's Bench, in *Young v. Rowe*, 5 M. and S., 291), it had been considered in the Court of King's Bench that, in the case of such an acceptance as this, it was not necessary to present the bill at the place named by the acceptor; but, in *Rowe v. Young*, the House of Lords held that it was necessary. In consequence of that decision, stat. 1 and 2 Geo. IV, cap. 78, passed, making such an acceptance general. But that was only as against the acceptor; other parties were left as the law stood before the Act. Now, the contract between an indorsee and his indorsee is very different from that between the acceptor and any other party. Before the Act it was not necessary, as against the acceptor, to present at all; but, as against other parties, it was necessary to show some presentment to the acceptor. Then, if a presentment be necessary, must you not present, as indicated by the acceptance? There are several cases to shew that you must. Such is *Gibb v. Mather* (2 Cr. and J., 254, S. C. 8, Bing, 214)."

And Hill, J., said: "As to the presentment, I think it would be very dangerous if the holder had the option of presenting either at the place named

The acceptance may also vary in the time of payment. Molloy, 283 ; Walker *v.* Atwood, 11 Mod., 190.*

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A partial acceptance engages to pay only part of the amount of the bill. A drawee accepted a foreign bill for £127 18s. 4d. as far as to pay £100 part thereof. He was sued on this acceptance, and it was held good, pro tanto, within the custom of merchants. Wegersloffe *v.* Keene, 1 Stra., 214. Though the drawee may thus accept for less than the amount, he cannot by accepting for more than its amount give the holder a claim beyond it, since his right, as well as the drawee's acceptance, is limited by the drawer's mandate, to which it refers. Pardessus, No. 269, Thomson 378.

Partial Acceptance.

Broadly stated, it would appear, from what we have seen, that the effect of qualified, conditional, varying, and partial acceptances is, that they are valid, so far as the acceptor

Effect of Qualified, &c. Acceptances.

in the address or the place named in the acceptance. This statute makes it unnecessary, as against the acceptor, to present at the place named in the acceptance, unless other places of payment are expressly excluded ; and, in Selby *v.* Eden (3 Bing. 611 ; as to the authority of this case, see Roach *v.* Johnston, Hayes *v.* Jones—Irish Exchequer—246 ; also, note d, to Halstead *v.* Skelton, 5 Q. B., 88), this was extended to the case where the place is named in the body of the bill. But this does not affect the question as between other parties.”

* “In Price *v.* Shute,” says Chitty, 10th ed., 202 n., “as mentioned in Molloy, B. 2, C. 10, S. 20, and as understood by Buller, J., a bill drawn payable 1st January was accepted to be paid 1st March, the holder struck out 1st March and put in 1st January, and when it was due, according to that date, he presented it for payment, which the acceptor refused, whereupon the payee struck out 1st January and restored 1st March, and recovered in an action brought on that acceptance ; see also Bayl., 5th ed., 203 ; but in Paton *v.* Winter, 1 Taunt., 423, Lawrence, J., observed that, in Master *v.* Miller, three judges against Buller thought there must have been some mistake in Molloy’s account of that decision, or that the case was not law, and that Lord Kenyon held the case not to conflict with Master *v.* Miller, 4 T. R., 320, because there the acceptance only was altered, and there was no alteration of the bill itself. See, however, as to the case of Paton *v.* Winter, per Lord Ellenborough, in Walton *v.* Hastings, 4 Camp., 223. In Walton *v.* Atwood, 11 Mod., 190, a bill dated 8th April, and no time fixed for payment, was presented to defendant 18th April, and he accepted it, to pay 8th September ; this being stated in the declaration, defendant demurred, and insisted that, as no time was prescribed for the payment, the bill was payable at sight, and then a promise to pay two or three months after sight was not an acceptance within the custom of merchants ; but the Court held it was an acceptance within the custom, and the demurrer was overruled. But a mere memorandum of the time of payment, incorrect by mistake, though made over the acceptance, is no variance from the tenor of the bill. Fanshawe *v.* Peet, 26 L. J., Exch. 314.”

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and the holder and subsequent parties are concerned, but that they would operate as a discharge of prior parties, unless their assent be obtained.

With respect to the partial acceptance, however, Chitty says, 330: "It should seem that an offer of an absolute acceptance for a *part* may be taken without previous *consent*, but, as to the residue, immediate notice of the partial non-acceptance should be given."*

Course with
Indefinite
Acceptance.

In the course of practice, the banker may chance to meet with a bill drawn payable, generally, in a large town, and accepted likewise generally, or without a particular place for presentment in that town being named by the acceptor. In such a case the holder may, of course, insist upon the acceptor specifying some bank or place at which the instrument will be paid, otherwise the bill may be treated as dishonoured. In *Mutford v. Walcot*, Ld. Raym., 575, Holt, C. J., observed: "If a bill be payable at London, and the person on whom it is drawn accept it, but names no house where he will pay it, the party that has the bill is not bound to be satisfied with this acceptance." Should circumstances, however, require the presentment of the bill for payment in its indefinite state of acceptance, it should, as the drawer is concerned, be forwarded to the town named and presented at all the banks there. And on this point, if the bill be drawn payable in London, and the acceptor have accepted it merely "payable in London," it has been thought by some that presentment at the Royal Exchange would be sufficient; but this is questionable. As to sufficiency of the presentment at the banks, it was found in *Hardy v. Woodroofe*, 2 Stark., 319, that a note payable in a particular town was properly presented at all the banks there;

* Byles, 13th ed., 195 n., says: "Perhaps it might not be necessary to obtain the consent to an acceptance for part of the amount. It has been doubted whether an acceptance payable at a particular place, and not otherwise or elsewhere, can be safely taken, without the consent of the prior parties since 1 and 2 Geo. IV, cap. 78.

and an instrument payable at one or other of two towns, may be presented at either. Beeching *v.* Gower, Holt, 313. Acceptor.

If the bill be addressed merely to a particular house, it is still a bill as against the acceptor, who, by his acceptance, is held as acknowledging himself to be the party intended. Doubtful Address.

Gray *v.* Milner, 8 Taunt, 739. And it is said that an instrument in the common form of a bill of exchange, except that the word "at" is substituted for "to" before the name of the drawees, should be declared on as a bill of exchange, and if refused acceptance, the drawer may immediately be sued, or if the word "at" is written so small, or in a manner so indistinct as to be capable of deceiving, it might be declared on either as a bill or as a promissory note after it is due. Chitty, 8th ed., 28. Indeed, when the instrument is made in a doubtful form, it may be treated either as a bill or note. Edis *v.* Bury, 6, B. and C., 433, and other cases.

For some time past an objectionable practice has been adopted by many of effecting the acceptance of the bill in red ink. This may arise from the desire to give prominence to this part of the instrument, but such an object is sufficiently gained by the ordinary method; besides, the composition of the fluid is not proof against the effects of time or climate, and, in the case of foreign or long-dated inland bills, the characters have been observed in such a faded and indistinct state as to be barely legible. Manner of Accepting.

It may be also noted that the mode of acceptance followed in Scotland is, that of placing the acceptor's name under the drawer's. Crossing the bill as practised in this country, however, is the preferable mode, as striking the attention more, and, for that reason, adding considerably to the convenience of the bill officers in their stated checking and assortment of the bills. It would be well, also, if the date when due were invariably attached to a bill, as in the forms of the instruments we have given, for though these appear little matters, their consideration

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Contract.

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General
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becomes important in an office where extraordinary attention and accuracy require to be displayed, and when the want of such, even in the minutest points, may lead to the most serious consequences.

INDORSER.—The whole of the constituent parts of the face of the bill having been thus considered, we now come to its other side, where the indorsation is effected, and by which means a valuable contract or security is transferred from hand to hand in a simple and unembarrassed manner, entitling the indorsee or holder to receive or recover its contents, and to maintain an action upon it, if needful, against the various obligants, for, upon indorsing, the indorser enters into a conditional contract to satisfy his indorsee, or any succeeding indorsee or holder, in the event of the acceptor's or maker's default.*

When payable to order, the bill or note cannot be negotiated without indorsement, and when the payee indorses he becomes the first "indorser;" and if he makes a special indorsement, or indorsement in full to another person, as "Pay to E. F. or order.—A.B." the other is called the "indorsee;" the "holder," being a general term for any one in possession of the instrument, having a right to enforce its payment, and the term, of course, includes payee, indorsee, or bearer.

If the payee indorses in blank or in general—that is, merely signs his name—the bill then becomes payable to bearer, and is negotiable by mere delivery, and its negotiation cannot be restrained by a subsequent special

* And, as observed by Byles, 9th ed., 214 n., "it has been contended that each indorsement is a warranty of the validity of the prior indorsements, and that an indorser who has been paid by the acceptor is liable if the indorsements to him turn out invalid, to be sued by the acceptor, on an implied undertaking that he, as holder, was entitled to receive the amount of the bill. *East India Company v. Tritton*, 3 B. and C., 280; 5 Dowl. and R., 214 S. C.; *Smith v. Mercer*, 6 Taunt., 76, 1 Marsh, 453 S. C. L'endosseur est garant solidaire avec les autres signataires de la vérité de la lettre ainsi que du paiement à l'échéance. *Pardessus*, 376. Tous ceux qui ont signé accepte, ou endossé une lettre de change, sont tenus à la garantie solidaire envers le porteur. *Code de Commerce*, 140; *Lovell v. Martin*, 4 Taunt., 799. See *McGregor v. Rhodes*, 25 L. J., Q. B. 318; 6 E. and B., 266 S. C.; *Robarts v. Tucker*, 16 Q. B., 575."

indorsement; that is to say, it will still, as against the drawer, the payee, the acceptor, the blank indorser, and all indorsers before him, be payable to bearer, though, as against the special indorser himself, title must be made through his indorsee. Smith *v.* Clarke, Peake, 225; Walker *v.* McDonald, 2 Ex., 527, Byles, 6th ed., 115.

To render a bill negotiable, it must originally, as we have already seen, have the requisite negotiable words, and, when it has so, the absence of negotiable words in an indorsement is immaterial, and will not affect the negotiation of the instrument, because, when originally drawn payable to order, it has acquired a negotiable quality which cannot be destroyed unless by special restriction, as will be presently seen.

If the bill be drawn payable without negotiable words, and the payee indorse, he will, however, be liable to his indorsee.*

An indorsement made on the face of the bill is valid, and, if there be no room on the instrument for proper indorsation, an indorsement may be made on a slip of paper called, from the French, an "allonge," and which can

* "A bill or note," says Byles, 6th ed., p. 113, "which does not contain a direction or promise to pay to *the order* of the payee, or to *bearer*, is not transferable; that is, not so as to charge the drawer or acceptor by an assignment of the right of action. But if, nevertheless, the payee does indorse a *bill* not negotiable, he is liable on his indorsement to his indorsee; for every indorser of a *bill* is in the nature of a new drawer. If the *bill*, however, were not originally negotiable, it seems to have been considered by the Court of Common Pleas that the first drawing exhausts the stamp, and that the indorsee cannot acquire a right without a new stamp, which cannot by law be imposed. If the declaration on a *bill* indorsed in blank, but not originally negotiable, or not indorsed by the payee, state that the defendant, the indorser, drew and indorsed the *bill*, payable to his *order*, it will, upon evidence, be open to the double objection that the same act is treated both as a drawing and an indorsement, which it cannot be, and that the *bill* is described as made payable to *order*, whereas the effect of the blank indorsement is to make it payable to *bearer*. But the indorsement of a *note* (whether originally negotiable or not) by one to whom it has not been transferred, will not make the indorser liable on his indorsement. For though every indorser of a *bill* may be treated, without inconvenience, as a new drawer or maker (for in that character he still requires notice of dishonour), yet an indorser of a *note* cannot be treated as a drawer or maker of the *note* without altering his situation for the worse, and depriving him of the right to notice of dishonour. The words, or *to his order*, or *to bearer*, if omitted by mistake, may be afterwards inserted, without vitiating the instrument either at common law or under the Stamp Act. Whether a *bill* or *note* be negotiable or not, is a question of law."

Indorser.
Allonge.

be annexed to the bill without infringing the stamp laws. The allonge is very common on foreign bills, particularly on those of Germany; and as a protection against fraud, and in compliance with the provisions of some of the foreign codes, the first of the indorsements in connection with it is sometimes so made that it begins on the bill and ends on the allonge. There is no legal limit to the number of indorsements.

Transferor by
Delivery.

A transferor by mere delivery, without indorsement, of a bill or note made or become payable to bearer, incurs no liability on the instrument, and, if it be dishonoured, he is not liable on the consideration, unless such be an antecedent debt for which the instrument was given in payment, or unless there was an express or implied contract that the instrument was not to be payment if dishonoured. Whether liable on the consideration or not, a transferor by delivery warrants that the bill is genuine.*

Negotiable
Instruments.

Exchequer bills payable to bearer, *Wookey v. Pole*, 4 B. and Ald. 1, East India bonds, and the bonds payable to bearer of any foreign prince or State, are negotiable instruments; but it has been held that debenture bonds payable to bearer, made in England by an English company, are not negotiable. *Crouch v. Credit Foncier of England*, 5th July, 1873, Q. B., 21 W. R., 946.†

* On the liability of a person transferring by delivery only, Byles says, 9th ed., 154: "It is conceived to be the general rule of the English law, and the fair result of the English authorities, that the transferer is not even liable to refund the consideration, if the bill or note so transferred by delivery, without indorsement, turn out to be of no value, by reason of the failure of the other parties to it; for the taking to market of a bill or note payable to bearer without indorsing it, is *prima facie* a sale of the bill. And there is no implied guarantee of the solvency of the maker, or of any other party."

And, 157, "a transferer by delivery, though he does not impliedly warrant the solvency of the parties to a promissory note or bill of exchange, does warrant that the bill or note is not forged or fictitious; and if the bill or note does not in this respect fully answer the warranty (though some signatures be genuine), yet the consideration entirely fails, and the money given for the bill may be recovered back, provided it be claimed within a reasonable time."

+ The debenture bond was in these terms:—"The Credit Foncier of England hereby promise, subject to the conditions indorsed on this debenture, to pay to the bearer the sum of £100 on the first day of May, 1872, or upon any earlier day upon which this bond shall be entitled to be paid off or redeemed, according to the said printed conditions indorsed hereon, such

When the indorsement of a bill or note is special or made in full, the person to whom it is indorsed must in his turn indorse the instrument, either in blank or full, to render it negotiable.

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Special
Indorsement.

payment to be made at Messrs. Smith, Payne, & Smith's, bankers, No. 1, Lombard Street," etc., "in witness whereof the common seal of the Credit Foncier of England (Limited) has been affixed this 19th day of May, 1869. Directors," etc. The bond was issued to one Makin, from whom it was stolen, and he gave immediate notice to the company, and they, on his indemnity, agreed to stop its payment and give him a duplicate bond. In October, 1870, the debenture was drawn as one of those to be paid off on 1st November, 1870, according to the conditions indorsed, and the amount was paid to the holder of the substituted bond. In the end of 1871, the plaintiff purchased the debenture sued upon from one Stanley, who afterwards absconded. The company refused to pay this debenture to the plaintiff. This action was brought, and Makin, in pursuance of his indemnity, defended the action in the name of the company.

The whole law on the subject was thus given in the judgment of Blackburn, J. : "The question of law reserved for this Court was, whether the plaintiff could, under such circumstances, maintain this action, it being admitted that the debenture had been stolen, and that the plaintiff derived title from the thief. No evidence was given at the trial as to whether similar documents are in practice treated as negotiable, nor was any express admission made as to this point ; but, from my brother Bramwell's report, we think that we must take it to have been tacitly admitted at the trial that they are so treated, and we must in this case assume that this admission is correct. As instruments of this kind have only come into use within the last few years, a custom or usage to treat them as negotiable can only have begun recently ; but we must, in deciding this case, proceed on the assumption that they have acquired whatever degree of negotiability can be created by any such recent custom of trade. As we proceed entirely on this admission, it is not to be taken in any future case that any custom was in this case established. The general rule is not disputed, that a *chase in action* cannot be transferred at law at all, but that in equity it may be assigned ; though the action at law must be brought by the assignee in the name of the original contractee, in this case, Makin, equity will compel the contractee, if he has assigned the contract, to allow his name to be used for this purpose on an indemnity against costs. Had Makin assigned this contract to the plaintiff, either directly or through the medium of intervening assignees, the question whether the plaintiff was able to sue in his own name, or was obliged to sue in the name of Makin, would have been purely technical. But the general rule, both at law and in equity, is that no person can acquire title, either to a *chase in action* or any other property, from one who has himself no title to it, and therefore the plaintiff could not in equity have compelled Makin to permit his name to be used, unless, to borrow the language of Tindal, C. J., in *Brandao v. Barnett*, 1 M. and G., 935, such 'an instrument as this falls within the description of property to which a good title may be acquired by a party who takes it bona fide for value, notwithstanding any defect of title in the party from whom it is taken.' In the present case, the plaintiff has taken upon himself the burthen of establishing both that the property in the debenture passed to him by delivery, and that the right to sue in his own name was transferred to him. The two propositions are very much connected, but not identical. The holder of an overdue bill or note may confer the right on the transferee to sue in his own name, but he conveys no better title than he had himself. So the assignee of a Scotch bond, which is assignable by the law of Scotland, may sue in his own name in the courts of this country—see *Innes v. Dunlop*, 8 T. R., 595—but he has not a better title than those from whom he took the bond, unless, perhaps, if the contract is by the law of Scotland not merely assignable, but also negotiable. As to this, in *Dixon v. Bovill*, 4 W. R., 813,

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Conversion of
Blank into
Special
Indorsement.

A holder is at liberty to convert the blank into a full indorsement. *Clark v. Pigot*, 1 Sal., 126. And if he thus makes the instrument payable to another than himself, and does not sign it, he does not incur the liabilities of an

3 McQ., 16, Lord Cranworth, then Lord Chancellor, in delivering the judgment of the House of Lords in a Scotch case, as to iron scrip notes, says : 'I have no hesitation in saying that, independently of the law merchant and of positive statute, within neither of which classes do these scrip notes range themselves, the law does not, either in Scotland or in England, enable any man by a written engagement to give a floating right of action at the suit of anyone into whose hands the writing may come, and who may thus acquire a right of action better than the right of him under whom he derives title.' But the two questions go very much together, and, indeed, in the notes to *Miller v. Race*, 1 Sm., L. C. 479, 6th ed., where all the authorities are collected, the very learned author says : 'It may, therefore, be laid down as a safe rule that, where an instrument is by the custom of trade transferable, like cash, by delivery, and is also capable of being sued upon by the person holding it pro tempore, there it is entitled to the name of a negotiable instrument, and the property in it passes to a bona fide transferee for value, though the transfer may not have taken place in market overt ; but that, if either of the above requisites be wanting, i.e., if it be either not accustomably transferable, or though it be accustomably transferable, yet, if its nature be such as to render it incapable of being put in suit by the party holding it pro tempore, it is not a negotiable instrument, nor will delivery of it pass the property of it to a vendee, however bona fide, if the transferor himself have not a good title to it, and the transfer be made out of market overt.' Bills of exchange and promissory notes, whether payable to order or to bearer, are, by the law merchant, negotiable in both senses of the word. The person who, by a genuine indorsement, or, where it is payable to bearer, by a delivery, becomes holder, may sue in his own name on the contract, and, if he is a bona fide holder for value, he has a good title, notwithstanding any defect of title in the party (whether indorser or deliverer) from whom he took it. The first question, therefore, is, whether this instrument is a promissory note. It is under seal, and therefore is *prima facie* a covenant, not a promise ; and it is quite clear that a covenant to pay money is not negotiable by the custom of merchants. When a corporation is established for trading purposes, it is, from its nature, capable of drawing a bill of exchange, and making the promise implied by law from making a bill, and is liable to be sued in assumpsit on the bill, though a body corporate. See *Murray v. The East India Company*, 5 B. and Ald., 204. This is not by virtue of any statute, but from the common law. But all such bills of exchange in practice always have been made under hand, by an agent authorized to draw or accept, as the case may be. The East India Company drew by their secretary. The Bank of England, as anyone who looks at a Bank of England note may see, make their notes by an agent, and there is no case in the books where a bill of exchange made under seal has been sued upon. The negotiability of promissory notes depend, in part at least, upon the statute 3 and 4 Anne, cap. 9, and it seems to have been the opinion of Lord Justice Wood, in *re General Estates Company*, 16 W. R., 919, L. R. 3, Ch. 762, and of Vice-Chancellor Malins, in *The Imperial Land Company of Marseilles*, L. R. 11, Eq. 490, that inasmuch as that Act enacts that promissory notes in writing, made and signed by any person or persons, *body politic or corporate*, or by the servant or agent of any *corporation*, banker, goldsmith, merchant, or trader, who is usually entrusted by him or them, whereby such person or persons, *body politic or corporate*, his or her or their servant or agent, doth promise to pay any sum of money, shall be indorsable as bills of exchange, are by the custom of merchants, it follows that a corporation fixing its seal to a written promise to pay must be considered as *signing* the promise, not as covenanting under seal to fulfil it, and so that the statute by implication enacts

indorser. Vincent and others *v.* Horlock and others, 1 Camp., 442. In this case, the defendants, Horlock & Co., who were sued as indorsers, had not signed their name, but had merely written over the payee's signature, "Pay the contents

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that what would at common law be their covenant to pay is their promise to pay. In Slack *v.* Highgate Archway Company, 5 Taunt., 792, a similar question was raised, but not decided. There, however, the Act authorized the making of notes *under the seal of the corporation*; but, although intimating their opinion, neither of the learned persons referred to gave any decision on the point, as it was not necessary for the purpose of the cases before them. Neither is it necessary for us to decide it, as, for reasons which will presently be given, the instrument in question, even if under hand, could not be a promissory note; but we wish to point out that, in Glyn *v.* Baker, 13 East., 509, the form of the East India bond was that the East India Company acknowledged to have received of G. W. Sibley £100, which the company promised to repay to Sibley, his executors, or assigns, by indorsement. It was, therefore, in form, a promissory note for value received, payable to order, and, had it been signed as such by an agent of the East India Company, would have been negotiable. But it was a bond under the seal of the East India Company; and Le Blanc, J., says 'it is clear no action could have been maintained on this bond but by Sibley, the obligee, or in his name; or, if he died, in the name of his executors.' The alarm occasioned by this decision was so great, that within a month afterwards an Act (51 Geo. III, cap. 64) was passed to make East India bonds negotiable, like promissory notes. It seems not to have occurred to any one that it could be said that this was already done by virtue of the statute of Anne, the promise in writing being signed by the East India Company's seal. This seems a strong authority for saying that instruments under the seal of a body corporate are not exceptions from the general rule laid down in Byles on Bills, p. 67 n., that 'at common law bills of exchange and promissory notes, being simple contracts, cannot be under seal, at least so as to retain their negotiable qualities.' And it certainly is very desirable that it should not be left doubtful on the face of an instrument, whether it is a covenant or a promise. But it is not necessary to decide, in the present case, whether an instrument under the seal of a corporation can be a promissory note, for the contract of the Credit Foncier is not merely to pay the money, but also to cause a portion of the bonds to be drawn in the stipulated manner, and anyone entitled to sue on the contract contained in this instrument would be entitled to sue for damages if the company did not fairly give him his chance of having his bond drawn according to the stipulated conditions, and it is obvious that such a contract as that cannot be a promissory note. It is not pretended that there is any statute applicable to such a class of instruments as the present. We have, therefore, to see whether it falls within any other principle. Foreign and colonial governments frequently create a public debt, the title to portions of which is by them made to depend on the possession of bonds expressed to be transferable to the bearer or holder. There can hardly properly be said to be any right of action on such instruments at all, though the holder has a claim on a foreign government. In Attorney-General *v.* Bonwens, 4 M. and W., 171, it was found, in the special verdict as to Russia, Danish, and Dutch bonds, that those securities have always been dealt with as transferable within this kingdom by delivery only; that it is not necessary to do any act out of England to render such a transfer valid; and that the bearers of the bonds have always been treated and dealt with by the agents of the three sovereigns as entitled to the money payable under the bonds. The Court in that case held the bonds transferable in England, so as to render the executors liable to probate duty in respect of them. And the Court of King's Bench, in Gorgier *v.* Mieville, 3 B. and C., 45, decided that a Prussian bond of a similar description was negotiable. We have no intention to throw the least doubt on this decision,

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to Vincent & Co." This was held not to be an indorsement by the defendants, and the plaintiffs were non-suited, Lord Ellenborough observing, "I am clearly of opinion that this is not an indorsement by the defendants, for such a purpose

but we do not think it applicable to an English instrument made in England ; and we express no opinion as to what might be the law as to obligations made by subjects abroad, which, by the law of the country where they were made, are negotiable in that country. We confine our judgment to the case before us, which is that of an English instrument made by an English company in England. We think that the form of the instrument shows that the defendants did contract with Makin, to whom they originally issued this instrument, to pay the money to the bearer of this instrument, and (wholly irrespective of any custom) they were competent to make any stipulations they pleased with Makin that would affect their own rights, and his only. If Makin had sued them, a plea that they had paid the money to the bearer without any notice that he was not entitled to it would be good, if, on the true construction of the instrument, it is stipulated that the receipt of the bearer giving up the instrument should be a sufficient discharge for the company, for they were quite competent to stipulate to that effect ; and if Makin were suing in his own name for the benefit of an assignee, as in *Higgs v. Northern Assam Tea Company*, 17 W. R., 1125, L. R., 4 Ex., 387, or if the assignee were proceeding in equity in his own name, as in *re Blakely Ordnance Company*, 16 W. R., 583 L. R., 3 Ch., 154 ; *re Natal Investment Company*, 16 W. R., 637 L. R., 3 Ch., 355 ; *Ex parte City Bank*, 16 W. R., 919 L. R., 3 Ch., 758 ; and *re Imperial Land Company of Marseilles*, 19 W. R., 223 L. R., 11 Eq., 478, and the defendants set up some equitable defence, good against the original contractee, and therefore, generally, good against the assignee also, it would be a good answer to say that the defendants had, with a view to induce persons to become assignees of such instruments, represented that there were no such equities, and that the now holder was induced to take this instrument on the faith of that representation ; that would amount to an estoppel at law—see in *re Bahia and Francisco Railway Company*, 16 W. R., 862 L. R., 3 Q. B., 584 ; and in the *Blakely Ordnance Company*, 16 W. R., 583 L. R., 3 Ch., 154, it was held that it was a good answer in equity. In *re Natal Investment Company*, 16 W. R., 637 L. R., 3 Ch., 358, Lord Cairns, as we understand him, thought that the mere fact of making an instrument payable to order did not amount to such a representation ; but he did not dispute that, if made out, it would produce the effect contended for, or say that such a provision was beyond the competency of the parties. We have not now to consider whether the form of this debenture is such as to amount to such a representation or not. If it does, the Credit Foncier had full power to alter or abandon their own rights ; but the plaintiff is obliged to contend in this case that they had also power to alter and abandon the rights of those who might become holders of the instruments, and to declare that such persons should, contrary to the general rule of law, hold their property on a precarious title, liable to be divested if a thief or finder could find a bona fide purchaser for the debenture. No authority has been cited to show that it is within the competency of private persons by their contract to attach such an incident to any property. He is also obliged to contend that they could give a right of action in his own name to any holder, though the general law would give him no such right of action to the holders. There is no decision or authority that it is competent to a party to create, by his own act, a transferable right of action on a contract. It is enough to refer to *Dixon v. Bovill*, 4 W. R., 813, 3 McQ., 11, and *Thomson v. Dowling*, 14 M. and W., 403, as authorities, that he cannot, irrespective of custom, so create it. We have only further to consider whether the custom or practice of trade to treat such instruments as negotiable makes any difference. We must take it as admitted (whether truly or not we know not) that such a custom has prevailed of late years, but,

the name of the party must appear written with intent to indorse. We see these words, ‘pay the contents to such a one,’ written over a blank indorsment every day without any thought of contracting an obligation, and no obligation

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as the instruments themselves are only of recent introduction, it can be no part of the law merchant. Incidents which the parties are competent, by express stipulation, to introduce into their contracts may be annexed by custom, however recent, provided that it be general, on the ground that they are tacitly incorporated in the contract. If the wording of an instrument is such as to exclude this tacit incorporation, no usage can annex the incident; but where the incident is of such a nature that the parties are not themselves competent to introduce it by express stipulation, no such incident can be annexed by the tacit stipulation arising from usage. It may be so annexed by the ancient law merchant, which forms part of the law, and of which the courts take notice. Nor, if the ancient law merchant annexes the incident, can any modern usage take it away. Thus, in *Edie v. The East India Company*, 2 Burr., 1216, there was a verdict of the jury, founded on strong evidence, that, according to usage in London, an indorsement to an indorsee by name, without any further words, was restrictive, but the Court of King's Bench decided that the evidence should not have been admitted, the law merchant being known to the Court to be that it was not restrictive. And in *Partridge v. Bank of England*, 9 Q. B., 396, there was the exact converse. There the dividend warrants of the Bank of England were in the form of cheques, payable to a particular person, Partridge, without any words to make it transferable, which, therefore, were, by the general law merchant, not transferable. The Court of Exchequer Chamber gave judgment non obstante veredicto on a plea, on which it had been found that, by custom, for sixty years such dividend warrants were negotiable. We have already intimated our opinion that it is beyond the competency of the parties to contract, by express words, to confer on the assignee of that contract a right to sue in his own name. And we also think it beyond the competency of the parties, by express stipulation, to deprive the assignee, of either the contract or the property represented by it, of his right to take back his property from anyone to whom a thief may have transferred it, even though that transferee took it bona fide and for value. As these stipulations, if express, would have been ineffectual, the tacit stipulations implied from custom must be equally ineffectual.” With reference to the custom or practice of trade, and the length of time it has prevailed, it was said, however, by the Court, in *Goodwin v. Robarts*, Ex. Ch., on appeal, 7th July, 1875, that “while we quite agree that the greater or less time during which a custom has existed may be material in determining how far it has generally prevailed, we cannot think that, if a usage is once shown to have been universal, it is the less entitled to prevail, because it may not have formed part of what in common, but we think inaccurate, parlance is termed the law merchant. It is obvious that such reasoning would have been fatal to the negotiability of foreign bonds, which are of comparatively modern origin, and yet, according to *Gorgier v. Mieville*, 3 B. and C., 45, are to be treated as negotiable. We think the judgment in *Crouch v. Credit Foncier* may well be supported, on the ground that substantially there was no proof of general usage. We cannot concur in thinking that, if proof of general usage had been established, it would have been sufficient ground for refusing to give effect to it that it did not form part of what is called ‘the ancient law merchant.’”

On the important subject of usage or custom, Mr. Justice Story has the following remarks in one of his judgments, 2 Sumner, 567: “I own myself,” he says, “no friend to the almost indiscriminate habit, of late years, of setting up particular usages or customs in almost all kinds of business and trade, to control, vary, or annul the general liabilities of parties under the common law as well as under the commercial law. It has long appeared to me that there is no small danger in admitting such loose and inconclusive usages and customs,

Indorser. is thereby contracted. When a bill is indorsed by the payee in blank, a power is given to the indorsee of specially appointing the payment to be made to a particular individual, and what he does in the exercise of this power is only, *expressio eorum quae tacite insunt*. This is a sufficient indorsement to the plaintiffs, but not by the defendants."

Transferee by Delivery. If the holder has in a bona fide manner, and for a valuable consideration, acquired a bill payable to bearer, he is not affected by any fraud that may have occurred in the transference of it, he being unaware of such fraud. Formerly, in the case of *Gill v. Cubitt*, 3 B. and C., 466, and other cases, it was held that, if the circumstances under which the party took a lost or stolen bill were such as ought to have *excited the suspicion of a prudent and careful man*, he must bear the loss; but this doctrine has been since considerably modified, the loss being thrown more upon the holder, by whose neglect the instrument has been lost or stolen. The cases in which this view has been taken are *Crook v. Jadis*, 5 B. and Ad., 909, and *Backhouse v. Harrison*, *ibid.* 1098. These cases came

often unknown to particular parties, and always liable to great misunderstandings and misinterpretations and abuses, to outweigh the well-known and well-settled principles of law; and I rejoice to find that of late years the courts of law, both in England and America, have been disposed to narrow the limits of the operation of such usages and customs, and to discountenance any further extension of them. The true and appropriate office of a usage or custom is to interpret the otherwise indeterminate intentions of parties, and to ascertain the nature and extent of their contracts, arising, not from express stipulations, but from mere implications and presumptions, and acts of a doubtful and equivocal character. It may also be admitted to ascertain the true meaning of a particular word, or of particular words, in a given instrument, when the word or words have various senses—some common, some qualified, and some technical, according to the subject matter to which they are applied. But I apprehend that it never can be proper to resort to any usage or custom to control or vary the positive stipulations in a written contract, and, *a fortiori*, not in order to contradict them. An express contract of the parties is always admissible to supersede, or vary, or control a usage or custom, for the latter may always be waived at the will of the parties. But a written and express contract cannot be controlled, or varied, or contradicted by a usage or custom, for that would not only be to admit parol evidence to control, vary, or contradict written contracts, but it would be to allow mere presumptions and implications, properly arising, in the absence of any positive expressions of intention to control, vary, or contradict the most formal and deliberate written declarations of the parties."

successively before Lord Denman, C. J., who with the other judges gave it as their opinion that nothing but gross negligence could subject a party to loss in negotiating such a bill.* And this doctrine appears to be still further extended from what is laid down by Lord Denman in the subsequent case of *Goodman v. Harvey*, 4 Ad. and E., 870. His Lordship said: "I believe we are all of opinion *that gross negligence only would not be a sufficient answer by the defendant*, when the plaintiff has given consideration for the bill. Gross negligence may be evidence of mala fides, but it is not the same thing. We have shaken off the last remnant of the contrary doctrine."

In practice, however, the banker does not avail himself of this wide latitude allowed by the law, and in his desire to give as little opportunity as possible for the circulation of bills obtained in a surreptitious manner, he exercises considerable caution when the instrument is offered to him by strangers, or persons of whose position he is not well acquainted.

* In *Backhouse v. Harrison*, supra, the following judgments were given:—
Denman, C. J.: "This case involves a mixed question of law and fact. The law upon the question is not very well settled, and I think the rule should be absolute, if not for entering a verdict for the plaintiff, at least for a new trial. I think, upon the whole, the plaintiff is bound to recover. To constitute a valid defence to the action, it was incumbent on the defendant to show that the manager of the bank had been guilty, at least, of gross negligence. The finding of the jury does not go to anything like that extent, nor was there any evidence to warrant such a finding."

Littledale, J.: "It was no defence to the action that the plaintiff took the bill under circumstances which ought to have excited the suspicion of a prudent man, and that it had not been fairly obtained. The defendant was bound to show that the plaintiff had been guilty of gross negligence. That was decided in *Crook v. Jadis*. The plaintiff (the banker) is, therefore, entitled to recover."

Patteson, J.: "I am of opinion that the first fact found by the jury did not amount to a defence to the action. I have no hesitation in saying that the rule first laid down in *Gill v. Cubitt*, and acted upon in these cases, that a party who takes a bill under circumstances which ought to have excited the suspicion of a prudent man cannot recover, has gone too far, and ought to be restricted. I can perfectly understand that a party who takes a bill fraudulently, or under such circumstances that he must know the person offering it to him has no right to it, will acquire no title; but I never could understand that a party who takes a bill bona fide, but under the circumstances mentioned in *Gill v. Cubitt*, does not acquire a property in it. I think the fact found by the jury here, that the plaintiff took the bills bona fide, but under such circumstances that a reasonably cautious man would not have taken them, was no defence."

Indorser.
Transferee by
Delivery.

Indorser.

Executors and personal representatives—i.e., his executors or administrators.

Administrators.

If the holder of a bill die, the title to it passes to his personal representatives—i.e., his executors or administrators. Rawlinson *v.* Stone, 3 Wills., 1.* And, on indorsing, they will be held personally liable, as in the case of any person signing in a representative character, if they do not expressly exclude such liability, as by adding, after their signature, “without recourse against us personally.”

Though one executor may pass the property in the instrument, it is usual, and perhaps advisable, in practice for all to indorse.

Bankruptcy.

Should the holder of a bill, who has a beneficial interest in it, become bankrupt, the property in it vests, from the time of the act of bankruptcy, in the trustee of his estate.

In general, property in which a bankrupt has no beneficial interest does not pass to his trustee, and, under the previous Bankruptcy Act, it has been held that a bankrupt may, after adjudication, indorse a bill accepted for his accommodation, so as to convey to his indorsee, for value, a right to sue the accommodation acceptor. Arden *v.* Watkins, 3 East., 317, Wallace *v.* Hardacre, 1 Camp., 45, Ramsbottom *v.* Cator, 1 Stark., 228; and see Willis *v.* Freeman, 12 East, 656.

Where bills, drawn without any consideration, and, in the words of one of the Lords Justices, “for the purpose of raising money, so as to cheat the creditors of both drawer and acceptors,” for £1,727 2s. were purchased by one Jones for £200, and both drawer and acceptors were contemplating bankruptcy, and the purchaser knew that the

* “If the holder be dead,” says Byles, 13th ed., 55, “and the executor have not yet proved the will, still it seems the executor is bound to present the bill when presentable; for his title to his testator’s property is derived exclusively from the will, and vests in him from the moment of the testator’s death. But, as the title of an administrator is derived wholly from the Court of Probate, and he has none till the letters of administration are granted, he would probably be excused by impossibility. A probate, being a judicial act of the Court of Probate, is conclusive as to the validity and contents of the will and the title of the executor, and, as long as it remains unrepealed, cannot be impeached in the other Courts. Therefore, a voluntary payment to an executor who has obtained probate by a forged will is a discharge to the debtor, notwithstanding that the probate is afterwards declared null.”

acceptors were in difficulties, but had some assets, and he had abstained from making inquiry about the drawer, or as to the consideration for the bills, it was held, the acceptors having become bankrupts, that he could not prove against their estate for more than the amount which he had actually paid for the bills. Jones *v.* Gordon, on appeal against the judgment of the Court of Appeal reversing an order of the Chief Judge in Bankruptcy, House of Lords, 25th and 26th June, 1877. If the decision of the Chief Judge in Bankruptcy, who held that Jones was entitled to prove for the full amount of the bills, had been allowed to stand, the creditors of an insolvent could, as observed by Lord O'Hagan, never be sure that he might not, when actually preparing to go into bankruptcy, transfer the right to prove on his estate to a person with whom he had no real dealing, and who had no real claim on him, so as to make the dividends to legitimate creditors inadequate or worthless.

In one case, that of Robertson *v.* Kensington, 4 Taunt, 30, it has been held that a bill may be indorsed conditionally, at least that a condition which may be annexed by the payee to his indorsement, before acceptance, will be binding on the acceptor. In this case, Robertson, the plaintiff and payee, had indorsed thus:—

“ Edinburgh, 19th November, 1808.

“ Pay the within sum to Messrs. Clark & Ross, or order, upon my name appearing in the Gazette as ensign in any regiment of the Line between the 1st and 64th, if within two months from this date.”

The bill was afterwards accepted and negotiated through several hands, and, on maturity, was paid by the acceptors to the holder without the condition having been fulfilled. The payee accordingly brought an action for recovery of the amount, and, on a case reserved, the Court decided in his favour.

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Bankruptcy.

Conditional
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Restrictive
Indorsement.

The payee, or any indorser, may make a restrictive indorsement, so as to limit or restrict the circulation of the bill, thus :—

“ Pay C. D., for my account.

“ A. B.,”

or, “ Pay C. D., for my use.

“ A. B.”

From old decisions, this species of indorsement appears to have been well known more than a century ago. By it an end is put to the negotiable nature of the instrument, and the following have been held in law as restrictive indorsements : “ The within must be credited to Captain M. L. Dahl, value in account.” *Ancher v. Bank of England*, 2 Doug., 637. And, “ Pay to Samuel Williams, Esq., of London, or his order, for my use.” *Sigourney v. Lloyd*, 8 Bar. and Cr., 622, affirmed 5 Bing., 525, Ex. Ch., where Williams discounted the bill with his bankers. He failed, and the bankers, to whom he was indebted beyond the amount of the bill, received payment of it at maturity. Held, in an action for money had and received, that the bankers were liable to refund the money to the restraining indorser. An indorsement made in the above terms, for the use of the indorser, amounts to a mandate revocable at the will of the indorser.*

* “A man,” says Byles, 9th ed., 152, “who takes a bill, the circulation of which, beyond the restricted indorsee, has been restrained by a restrictive direction or indorsement, cannot sue the drawer or acceptor upon it, but holds the bill or the money received by him as the trustee of the restraining party, and is liable to refund the bill or money received upon it to the party making the restrictive indorsement; for such words cannot be intended as a mere private direction to the immediate indorsee, seeing that he is bound to account for the bill without any such direction, not to mention that the most obvious mode of conveying a private direction would be either by oral communication, or by a letter enveloping the bill. Nor can they be a mere direction to the drawee not to pay the original restricted indorsee, for a restrictive indorsement constitutes the restricted indorsee, the indorser’s agent to receive the money, and for its misapplication, when so paid, the drawee is not responsible. As between the restraining indorser, therefore, the immediate indorsee, and the drawee, the words ‘to my use,’ or the like, are of no effect. But as between the restraining indorser and a subsequent indorser, and the drawee, they are a notification that the restricted indorsee has no property in the bill, that he is a mere trustee for his principal, and that he can appoint no sub-agent, except for the purpose of holding the bill or the money upon a similar trust. The

An endorser may likewise, by a qualified indorsement, exonerate himself from all liability on the instrument, as by adding to his signature the words "without recourse to me," or using the French term "sans recours." As this qualification relates only to the indorser's liability, it does not, of course, otherwise affect the negotiation of the instrument.

Like the drawer and acceptor, an indorser is at liberty to sign a blank or skeleton bill, and he is bound for any amount which may be inserted consistent with the stamp. *Russell v. Langstaffe*, Dougl. 514, in which Lord Mansfield observed: "Nothing is so clear as the point that an indorsement on a blank note is a letter of credit for an indefinite sum. The defendant (indorser) says, 'Trust G—— (the maker) to any amount, and I will be his security.' It does not lie in his mouth to say the indorsement was not regular."

The indorsement of an infant payee, though it conveys no interest as against himself, has been held valid as regards the others. See, amongst other cases, *Grey v. Cooper*, 3 Dougl., 65 E. T., 22, Geo. III; note of same case in Selwyn's *Ni. Pri.*, 4th ed., 287; Chitty, *addenda et corrigenda*, 8th ed., 796, where it is observed: "The infancy of the payee is no answer, in an action by the indorsee, of a bill of exchange against the drawer, and per Lord Mansfield. The ground on which the drawer is charged is, that he drew a bill by which he engaged to pay according to the order of the payee, whoever that payee might be.

subsequent indorsee, therefore, being a mere agent, can have no action on the bill if it is dishonoured, nor hold it, or the money received upon it, against the principal; and if, instead of paying the money to the principal, he chooses to pay it to the intermediate agent, he becomes responsible for its misapplication, and so does any one who pays it to him. A bill was indorsed by the payee in this form: 'Pay A. B., or order, for the account of C. D.' A. B. pledged it with the defendant, who advanced money upon it to A. B. personally. Held that the defendant had sufficient notice from the indorsement that A. B. had no authority to raise money on the bill for his own benefit, and, therefore, could not defend an action of trover for the bill brought by C. D., his principal. *Treuttel v. Barandon*, 8 *Taunt.*, 100; 1 *Moore*, 543, S. C."

Indorser.
Infant.

He might give the infant an authority which the law itself did not give him. The privilege of an infant is personal. The infant sets up no claim."

Beneficiary.

An instrument made payable "to A., or order, for the use of B." is transferable by A. and not by B. *Evans v. Cramlington, Carthew*, 5, where a bill was payable to "Price, or order, for the use of Calvert." The Court of King's Bench, and afterwards the Exchequer Chamber, held that the legal title to indorse rested in Price alone.

Several.

When made payable to several persons not in partnership, each must individually indorse. *Carwick v. Vickery, Dougl.*, 653.

Amount.

An indorsement cannot be made for the transfer of less than the full amount appearing due on the bill, for, where the contract of a party has only subjected him to one action, it cannot be divided so as to subject him to a plurality of actions. But, if the instrument be delivered for a part, and the limitation of the transfer do not appear on it, the transferee may sue the maker or acceptor for the whole amount, and is a trustee of the surplus for the transferor. When part of the bill has been paid, it may be indorsed for the residue. *Hawkins v. Cardy*, 1 Ld. Raym., 360. *Reid v. Furnival*, 1 Car. and M., 538.

Overdue.

An instrument may be negotiated after it is due, but a party so receiving it takes it subject to the risks or the objections, and equities attaching to it, in the hands of the person from whom he received it. Formerly it was doubtful whether the mere circumstance itself of a bill being overdue was sufficient to affect the indorsee, but now it appears settled that when an overdue bill is transferred, whether by indorsement or delivery, it, in the language of Lord Ellenborough, as quoted by Byles, 6 ed., 129, "comes disgraced to the indorsee, and it is his duty to make inquiries concerning it. If he takes it, though he gives a full consideration for it, he takes it on the credit of the indorser, and subject to all the equities with which it may

be encumbered." In *Sturtevant v. Ford*, 4 M. and G., 101, Byles 129, Cresswell, J., says: "Perhaps the better expression would be that he takes the bill subject to all its equities." Indorser.
Overdue.

It sometimes happens that bills are taken by the banker in security of a constituent's account; and, in such a situation, it has been held that, although the balance was in favour of the constituent when the bills became due, yet, if the latter were allowed to remain in the hands of the banker after maturity, and the balance turned, the banker would be entitled to recover against the acceptor, even though that acceptor signed for the accommodation of the constituent. *Atwood v. Crowdie*, 1 Stark., 483. In this case the defendants, for the accommodation of a firm, accepted bills payable to the firm. The firm lodged these bills with their banker in security of account. At the time the bills became due, and at several periods afterwards, the balance was in favour of the firm, but the firm failed, and the balance then turned. The banker sued the defendants; the latter insisted that, as the balance was against the banker when the bills became due, and afterwards, the bills must be considered as satisfied, or, at least, that the banker must stand as if the bills had been indorsed to him after they became due; but Lord Ellenborough held that, as the bills were sent on account, which must have meant the floating account, though there were periods at which the banker had no claim upon them, and they might have been demanded back, yet, as they were suffered to remain, the banker's claim revested, when by fresh advances the balance turned in his favour, and a verdict was accordingly given for the banker.

If a bill be paid after it is due, it cannot be again negotiated, if such negotiation affect persons who would otherwise be discharged. *Beck v. Robley*, cited 1, H. Bla., 89 n, where a bill drawn payable to the order of a third party, named Hodgson, was returned, after presentment to the acceptor, to the drawer, and paid by him. He afterwards indorsed it to another, who brought an action After
Payment.

Indorser.
After
Payment.

against the acceptor ; but the jury thought that, when the drawer took the bill up its negotiability ceased, and they found for the acceptor. On a rule nisi for a new trial, the Court thought the jury right, and Lord Mansfield said : "When a draft is given payable to A. or order, the purpose is, that it shall be paid to A. or order ; and when it comes back unpaid, and is taken up by the drawer, it ceases to be a bill. If it were negotiable here, Hodgson would be liable, for which there is no colour." But a payee or indorsee who pays a bill may afterwards negotiate it, because he thereby only binds himself and the parties against whom he has a right of action. *Callow v. Lawrence*, 3 M. and S., 97 ; *Hubbard v. Jackson*, 4 Bing. 390, Bayley, 166. In *Callow v. Lawrence*, a party named Pywell drew a bill payable to his own order on defendant, and indorsed it to one Taylor ; defendant accepted the bill, but did not pay it ; Pywell took it up, and indorsed it to plaintiff. It was urged that, after Pywell had once paid it, he could not indorse it—its negotiability was at an end ; but, on cause shewn, the Court were clear that Pywell's payment did not terminate its negotiability, because his indorsement would make no person liable but himself and defendant, and defendant had never been discharged.*

Revocation.

An indorsement made, and the bill delivered to the indorsee, the indorsement is irrevocable without that

* "The power of the drawer," says Chitty, 10th ed., 156, "in the case of a bona fide bill, to re-issue it after payment of it by himself, has at different times received considerable attention in the courts, but continues to be regarded in the most recent cases by some of the learned judges with obvious reserve. The most commonly received opinion is thus expounded by Lord Ellenborough: 'A bill of exchange is negotiable ad infinitum until it has been paid by or discharged on behalf of the acceptor. If the drawer has paid the bill, it seems that he may sue the acceptor upon the bill, and if, instead of suing the acceptor, he put it into circulation upon his own indorsement only, it does not prejudice any of the other parties who have indorsed the bill, that the holder should be at liberty to sue the acceptor. The case would be different if the circulation of the bill would have the effect of prejudicing any of the indorsers.' Where, therefore, the drawer is also payee of the bill, it has been held that he may take it up at maturity and re-issue it, but, if the bill were payable to a third person, the drawer either would have no title to re-issue it, the indorsements being struck out, or, the indorsement of the payee remaining, he would re-issue it to the prejudice of that indorser."

indorsee's consent. Before the bill has been delivered, however, the indorsement may, like an acceptance, be revoked. On this point, and the effect of transmission by post, Lord Justice Mellish said, in *ex parte Cote in re Deveze*, 7th November, 1873: "Indorsement alone is not enough to change the property; there must be also a delivery of the indorsed bill to the indorsee or his agent. If the indorser delivered the indorsed bill to his own agent, he could recall it, whereas he could not do so if he had delivered it to the indorsee's agent. So that this question arose, Of which party was the post office the agent? In this country, where a letter could not be recovered from the post office by the sender after it had been posted, *if the arrangement between two parties was that bills should be sent by the indorser to the indorsee by post*, so soon as the bills were put into the post they became the property of the indorsee. But, according to the rules of the French post office, a person who posted a letter could, on complying with certain forms, get it back again at any time before it had been despatched from the office where it was posted. The result of this was, that the French post office remained the agent of the sender of the letter until it was despatched from the office where it was posted, and the property in bills contained in the letter would not pass to the indorsee till the letter was despatched."

An indorsement cancelled by mistake does not affect the bill, and the indorser whose signature is so cancelled is still liable on the instrument; but, if the indorsement be struck out designedly, the indorser will be discharged. *Wilkinson v. Johnson*, 5 D. and Ry., 403; *Fairclough v. Pavia*, 9 Exch., 690.

Like the drawer, an indorser is at liberty to refer the bill to a third party for payment in case of need.*

* As to a direction, "in case of need," on an indorsement, see *Leonard v. Wilson*, 2 C. and M., 589. "There seems from that case," says Byles, 9th ed., 255 n., "no obligation to present an inland bill (where the direction, in case of need, is given by an indorser) to the party to whom, in case of need,

Indorser.
Revocation.

Cancellation.

Reference.

Indorser.
Re-issue.

Until discharge of the bill, or its payment by the acceptor at or after maturity, it may be negotiated to, and re-issued by, any of the previous obligants; but, when re-indorsed to a prior obligant, he cannot sue the intermediate parties, for they in their turn could sue him as a prior indorser, and the result would be that the parties would be placed in precisely the same position as before the actions. *Bishop v. Hayward*, 4 T. R., 470.

Irregularities.

In many instances, bills have passed through our hands with the signature of the indorsee varying from the name given in the special indorsement. In such cases, when aware of the identity of the indorsee, and that the mis-spelling has evidently been by mistake, it is our practice to get him to write, before his proper signature, his name as mis-spelled, and then negotiate the instrument.

And when "Messrs." appears, as it sometimes does, before an indorsement, thus converting it into an address, it is our invariable practice to return the instrument for proper signature.

In irregularities or variations in connection with prior indorsements, the bill is, according to circumstances, either refused, or intimation given and instructions obtained from the client before forwarding it for payment.

Under certain circumstances, where a bill has been unduly obtained, or where its consideration is fraudulent, the Court will restrain its negotiation, and order it to be delivered up.

Under the suspended Act already referred to of 17 Geo. III, cap. 30, there are, it may be mentioned, special regulations as to the indorsation of bills or notes under £5, it being necessary that the indorsement be made before maturity of the instrument, which must be made payable within 21 days from the time of drawing, that the

Interposition
of Court.

Bills under
£5.

it may be presented. The referee, in case of need, appointed by the indorser, though agent to pay the bill, is not agent to receive notice of dishonour. *In re Leeds Banking Company*, 1 Law Rep., Equity 76, 35 L. J., Ch. 33."

indorsement be also dated, and specify the place of abode of the indorsee, and that it be attested by at least one subscribing witness.

PRESENTMENT FOR ACCEPTANCE.—In the circulation of the bill drawn payable after sight, considerable latitude is, for the convenience of business, allowed before having it actually presented for acceptance. Indeed, there is no absolute rule on this point, and some weight appears to be attached to the opinion of Mr. Justice Buller, who says, in the case of *Muilman v. D'Eguino*, 2 H. Bl., 565 : “The only rule I know of which can be applied to the case of bills of exchange is, that *due diligence* must be used. Due diligence is the only thing to be looked at, whether the bill be foreign or inland, and whether it be payable at sight, at so many days after, or in any other manner. But I think a rule may be thus far laid down, as to laches, with regard to bills payable at sight, or a certain time after sight—namely, *that they ought to be put in circulation*; and if a bill drawn at *three days' sight* were kept out in that way for *a year*, I cannot say that there would be laches; but if, instead of putting it in circulation, the holder were to lock it up for any length of time, I should say that he would be guilty of laches; but, further than this, no rule can be laid down.” And Tindal, C. J., has observed : “It never can be required of the holder instantly, on receipt of the bill, under all disadvantages, to put it into circulation. To hold the purchaser bound by such an obligation would impede, if not altogether destroy, the market for buying and selling foreign bills, to the great injury, no less than to the inconvenience, of the drawer himself.” *Mellish v. Rawdon*, 9 Bing., 416, where it was held that no unreasonable delay had taken place in the holder of a bill on Rio de Janeiro at sixty days' sight, keeping it for nearly five months, in consequence of the exchange being against him. And in *Goupy v. Harden, Holt* 342, 7 Taunt. 159, 2 Marsh. 454, where two bills drawn from London on Lisbon, on 12th

Indorser.

*Presentment
for
Acceptance.*

*After sight
Bills.*

Presentment
for
Acceptance.
After sight
Bills.

May, at thirty days' sight, were circulated through Paris and Genoa, and not presented for acceptance until the 22nd August, the jury found, and the Court concurred, that no unreasonable delay had taken place in the presentment. Where, however, a bill in two parts, drawn in Newfoundland on 12th August, was not presented for acceptance in London till 16th November, it was held that unreasonable delay had occurred. In this case there was nothing proved to excuse the delay, and the Court were of opinion that the circumstance of the bill being drawn in a set should have accelerated the time for presentment. *Straker v. Graham*, 4 M. and W., 721. On the point of what is reasonable time, it has been said that this is a mixed question of law and fact, to be decided by the jury, acting under the direction of the judge upon the particular circumstances of each case. *Mellish v. Rawdon*, supra. *Shute v. Robins, Mood. and M.*, 133.*

It will be thus seen that reasonable time, or due diligence, is in this country extended to a limit somewhat indefinite, and that the Courts display considerable caution and no little hesitation in determining what should be regarded as a proper time for presentment. However, as it is in a general sense evidently for the interest of the holder that the bill should be accepted as soon as possible, no delay apart from the peculiar considerations which will have been observed, should be incurred in effecting the presentment.

In certain foreign countries the law fixes the time within which presentment must be made.

Foreign Bill.

Of the constitution of the acceptance of the foreign bill, formerly a marked distinction existed between it and that

* It has been much disputed whether the question of reasonable time is for a jury, or is purely a question of law for the Court. See, with the above cases, those of *Muielman v. D'Eguino*, ante 205; *Fry v. Hill*, 7 *Taunt.*, 395; *Darbishire v. Parker*, 6 *East*, 12-13. In *Tindal v. Brown*, 1 *T. R.*, 168, Lord Mansfield said that reasonable time for notice of dishonour is partly a question of fact and partly of law; it may depend, in some measure, on facts, such as the distance at which the parties live, the course of post, etc.; but that, whenever a rule can be laid down, it should be decided and adhered to by the Court.

of the inland bill. We have seen that the acceptance of the latter required to be in writing on the bill itself, and that the statute more particularly enacting this, 1 and 2 Geo. IV, cap. 78, sec. 2, did not embrace foreign bills. The acceptance of bills drawn from or on foreign countries was, therefore, regulated by the law of acceptance, which obtained previously to the above statute. Accordingly, the foreign bill might not only have been accepted by separate letter, or other document distinct from the bill, but it likewise might have been accepted verbally, or even by implication, such as by the drawee keeping the instrument an undue length of time, or by any other act giving credit to the instrument or inducing the holder to think that it would be accepted. Now, however, the 19 and 20 Vic., cap. 97, sec. 6, puts the foreign bill on precisely the same footing as the inland bill with regard to the acceptance, which, as has been seen, must be confined to a writing on the bill itself, "or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor, or some person duly authorized by him."

The drawer of the bill may, as is frequently done in connection with the foreign bill, direct, in the event of its not being accepted or paid, application to be made to a third party for honour, and this is done by simply writing under the drawee's address, and before the third party's designation, the words "au besoin chez—," or "In need at—." This serves to prevent the return of the bill with expenses, and in practice does not appear to obstruct the circulation of the instrument, although it has not been unreasonably conjectured, Chitty, 8th ed., 188, that the introduction of such a requisition would rather import an apprehension that the bill will not be regularly accepted or paid, and thus serve to diminish the credit which might, otherwise, be attached to the instrument without such desire being expressed. With a requisition, of this nature, on the foreign bill, the holder, it is said by Chitty, is bound

Presentment
for
Acceptance.
Foreign Bill.

Reference for
Honour.

Presentment
for
Acceptance.
Reference for
Honour.

to comply, and he adds, that the referred party "may accept and pay without previous protest, in which respect he differs from an acceptor, supra protest. And the party so paying has a right to sue the drawer for the amount." In practice, however, protest is generally made.

An indorser, in making a requisition for honour, should express it under his signature, though the banker, when he finds a reference for honour necessary, whether upon the foreign or inland bill, is in the habit, generally, of naming his London agents at the end of the instrument. His reference simply names the bank with the prefix, "at," as thus: "At the London and Westminster Bank, Lothbury."

We have seen, ante p. 203 n., that from the case of Leonard *v.* Wilson, there would seem, as regards the inland bill, to be no *obligation* on the part of the holder to comply with this requisition, though it is otherwise, as has just been observed, if made as regards the foreign bill, by the *drawer*, in which case the requisition may be considered as part of the original contract. Byles says, 9th ed., 255 n., that the referee "is more properly an original alternative drawee than an acceptor for honour."

Return
without
Expense.

The drawer may also direct the bill, in the event of its dishonour, to be returned without protest or expense, the words used in such a case being commonly "retour sans protet," or, "sans frais."

After date
Bills.

Importance
of early
Presentment.

When payable at a time certain, as at so many days or months after date, the holder is not bound to procure the bill accepted after it has once been put into circulation. A prudent holder, however, will always have the instrument forwarded for acceptance, as by means of this he obtains the additional security of the drawee, thus rendering the bill more readily negotiable; and should the drawee refuse to accept, the drawer and indorser may at once be sued.

By such summary process, upon refusal of acceptance, a wholesome check is put upon the unprincipled drawing on parties of known substance, and thus circulating

instruments, the true character of which might not be discovered until serious loss or injury had been occasioned to the innocent.

In some instances, on the drawer's account, a speedy presentment is likewise of importance, as, by early notice of dishonour, he may be better able to get his effects out of the drawee's hands.

The holder is not bound, as we have already seen, to receive an acceptance which differs from the tenor.

Presentment must be made to the drawee himself, or to his authorised agent—*Cheek v. Roper*, 5 Esp., 175—and it is not unusual, when the holder has confidence in the drawee, to send the bill direct to him by post for acceptance. If the drawee have removed, or the bill be not addressed to him at any particular place, due diligence, which is a question of fact for the jury, should be used to find him out before the instrument is treated as dishonoured. *Collins v. Butler*, 2 Stra., 1087; *Bateman v. Joseph*, 12 East, 433. If he has left the country, and has no place of business, the bill should be presented at his last place of abode, or at his known agents. If there be no such person as the drawee, if he has absconded, or if, after ineffectual applications at his place of business, or, if he have none, at his residence, he cannot be met with, and no one in his service has instructions respecting the accepting of the bill, then in each of these cases the instrument may be treated as dishonoured. If he be dead, presentment should be made to the known executors or administrators, and, if there be no such known personal representatives, then at the house where the deceased resided, or at his place of business, if still kept open.*

* "If, on presentment, it appear that the drawee is dead, the holder should inquire after his personal representative, and, if he live within a reasonable distance, should present the bill to him." Chitty, 8th ed., 307.

On the part of executors or administrators, it may be remarked that, in signing, they should stipulate that payment will be made by them out of the estate of the deceased only. Without this stipulation they would be personally liable, notwithstanding their signatures as "executors" or "administrators."

Presentment
for
Acceptance.
When made.

Presentment for acceptance should be made during business hours.*

When the holder is an agent only, and when the payee is expressly directed by the drawer to present, it is said that it is incumbent upon these parties to make presentment for acceptance as soon as possible, or they will be answerable for any loss that may arise from their neglect. Poth., 128. And see Marius, 46, who holds that a person in all cases, whether agent or not, is bound to make presentment for acceptance. In the case of the Bank of Van Diemen's Land *v.* Bank of Victoria, ante 173, the Judicial Committee observed, on the point of delay by an agent, that, if damage accrued by his negligence, there would be a right of action, and a right to obtain indemnity for the damage that had so accrued; but, at the same time, it was stated that the duty of the agent is to obtain acceptance of the bill if possible, but not to press unduly for acceptance in such a way as to lead to a refusal, provided that the steps for obtaining acceptance or refusal are taken within that limit of time which will preserve the right of his principal against the drawer. And the customary time, 24 business hours, was, as we have seen, recognized.†

Negligence in
Presenter.

If the owner who leaves a bill for acceptance enables a stranger to give such a description of it as to obtain it from the drawee, without negligence on his part, the owner cannot maintain trover for it against the drawer. Morrison *v.* Buchanan, 6 C. and P., 18.

Vide Childs *v.* Monins and Bowles, 2 B. and B., 460, where two makers of a note, granting it as executors, were found personally responsible, inasmuch as they were held to have thereby admitted assets.

* On this point, Chitty says, 8th ed., 305: "Presentment should in all cases be made during the usual hours of business; a presentment to a tradesman need not be made during banking hours; a presentment to him at eight in the evening would suffice; and a presentment at any time on the day or evening is sufficient, if an answer be given by an authorized person."

† In the remittance of bills by country bankers to their correspondents in London, some such general understanding as the following is not unusual:—That the London banker shall present for acceptance all unaccepted inland bills that have not less than six days to run after coming into his hands, and that all bills after sight shall be presented for acceptance on the day that they reach him.

Should the drawee keep the bill or delay acceptance beyond the above period, notice should be given to the other parties on the bill. The notice by the banker is, in general, only sent to the client or correspondent from whom he received the bill. The following is usually the form of his intimation when sent to the drawers :—

The Provincial Bank,
Liverpool, 8th March, 18 .
Gentlemen,
I beg to advise that your bill on Spindles,
Skewer, & Co., 1st March, 3 m./d.,* for £150, is
unaccepted. Answer: “ ”.†
I am, etc.,

To Messrs. Maranham & Mobile,
Merchants,
Tower Buildings,
Liverpool.

When, after this, the bill is accepted, the common practice of the banker is to take no further heed of the circumstance, though some of the profession not only give notice of the acceptance, but specially request their correspondents to furnish the same to them under similar circumstances.

Should the drawee retain the bill, and refuse to return it either accepted or unaccepted, it must be treated as dishonoured, and recourse should be had to a notary, if there be one in the place, who, after making a formal demand, will draw out the necessary protest. The form of this description of protest, when executed by the banker, will be afterwards seen.

* M./d., with m./s., d./d., d./s., and d./a., are, it may be hardly necessary to observe, contractions for months after date, months after sight, days after date, days after sight, and days after acceptance.

† The answer, or reason alleged for the non-acceptance, should be given in the exact words, as nearly as possible, of the drawee.

Presentment
for
Acceptance.
Refusal to
Accept.

If, upon presentment, a refusal to accept be made by the drawee, it need hardly be observed that notice of such should be immediately sent by the holder to all the other parties on the bill. The reason for such procedure is that the drawer may forthwith withdraw his effects from the drawee, or stop such as are in transitu, and that the several parties may take measures to secure themselves by recurring upon those respectively liable to them, it being a presumption of law that, if due notice is not given, the drawer and indorsers are prejudiced by the omission. Formerly it was held that it was incumbent, upon the party pleading want of notice, to prove that he had thereby really sustained damage, but it is now well settled that such damage is to be presumed, and it has been remarked that "it is much more beneficial to the commerce of bills to deny recourse wherever such notification or any other step of negotiation has been neglected, than to allow an inquiry in each particular case, whether damage has been thereby sustained or not." Thomson, 502. In framing the notice, no particular form of words is requisite, but it is necessary to be careful in describing the bill. The notice, if to the drawer, or in this case the drawers, may be briefly thus :—

The Provincial Bank,

Liverpool, 8th March, 18 . . .

Gentlemen,

I beg to advise that your bill on Spindles, Skewer, & Co., 1st March, 3 m/d., for £150, is refused acceptance.

I am, etc.,

.....

To Messrs. Maranham & Mobile,
Merchants,

Tower Buildings,

Liverpool.

Notice of
Refusal.

If to an indorser, it should bear this variation :—

The Provincial Bank,
Liverpool, 8th March, 18 .
Gentlemen,

Presentment
for
Acceptance.
Notice of
Refusal.

I beg to advise that Maranham & Mobile's bill on Spindles, Skewer, & Co., 1st March, 3 m/d., for £150, bearing your indorsement, is refused acceptance.

I am, etc.,

To Mr., etc.

.....

If due notice (the time of which, with other particulars, will be found more fully discussed afterwards in our consideration of the dishonour by non-payment, the rules as to notice being alike in both instances of dishonour,) be omitted, the parties to the bill will be discharged from all liability, except, indeed, in accommodation cases, when the drawer (who has no effects in the hands of the drawee, and has no recourse upon anyone) is not entitled to notice of dishonour either of acceptance or payment. In such cases the drawer, being himself the real debtor, acquires no right of action against the acceptor by paying the bill, and suffers no injury from want of notice of non-acceptance or non-payment; and therefore the laches of the holder affords him no defence. *Per Chambre, J., in Leach v. Hewitt*, 4 *Taunt.*, 733. And therefore, where the drawer had supplied the drawee with goods on credit which did not elapse until after the bill would fall due, and the drawer had no right to draw the bill, it was held that he was not discharged by the want of notice of dishonour. *Claridge v. Dalton*, 4 *M. and S.*, 226, *Chitty*, 8th ed., 357. It is, of course, no excuse for neglect of notice to an indorser that the drawer had no effects in the drawee's hands, as the former has no concern with the accounts between the latter parties. *Wilks v. Jacks, Peake*, 202. But if the indorser be in possession of funds from the drawer to pay the bill, notice to the

Presentment
for
Acceptance.
Notice of
Refusal.

endorser is unnecessary. *Corney v. Mendez da Costa*, 1 Esp., 302; *Carter v. Flower*, 16 M. and W., 751. If at any time between the drawing of the bill and its presentment and dishonour the drawee had effects of the drawer, or if without effects the latter had reasonable ground for expecting the bill would be honoured, he is entitled to notice. Where the drawer had goods in the hands of the drawees to the amount of £1500 but owed them £10,000 or £11,000, and the drawees had appropriated the goods in satisfaction of the debt, it was held that notice of dishonour to the drawer was still essential. Lord Ellenborough said : “If a man draws upon a house with whom he has no account, he knows that the bill will not be accepted ; he can suffer no injury from want of notice of its dishonour, and therefore he is not entitled to such notice ; but the case is quite otherwise where the drawer has a fluctuating balance in the hands of the drawee ; there notice is peculiarly requisite. Without this how can the drawer know that credit has been refused to him, and that his bill has been dishonoured ? It is said here that the effects in the hands of the drawees were all appropriated to discharge their own debt ; but that appropriation should appear by writing, and the defendant should be a party to it. I wish that notice had never been dispensed with, then we should not have been troubled with investigating accounts between drawer and drawee. I certainly will not relax the rule still farther, which I should do if I were to hold that notice was unnecessary in the present case.” *Blackham v. Doren*, 2 Camp., 503.

If the party entitled to notice be abroad at the time of the dishonour, it will be sufficient if notice of non-acceptance be left at his place of residence here.*

It has been said above that notice of non-acceptance should be given by the holder to all the other parties preceding him on the bill. This is certainly the safest and

* And “a demand of acceptance or payment from his wife or servant would in such case be regular.” Chitty, 8th ed., 369.

most unexceptionable course to adopt, though it has been held that notice to the next prior party is sufficient to render the others liable to the holder if they are duly successively apprised each by the other of the dishonour.

Presentment
for
Acceptance.
Notice of
Refusal.

Guided by circumstances, the banker either sends notice to all or to his client only, or at once returns the bill.

When a refusal of acceptance is made it is not unusual to have the bill noted for non-acceptance, a ceremony which, though it is said to be *per se* unavailing, as it is in fact but the mere preliminary to a protest, is yet not altogether without its use in the more readily satisfying the previous parties to the instrument that a regular presentment has been made. While the noting is not uncommon, the protesting an inland bill for non-acceptance is seldom had recourse to, and is, in fact, unnecessary; for without it, as we shall presently see, the holder's right both to principal and interest remains secure and unaffected, after due notice of dishonour has been given. However, as the banker is sometimes requested to have the bill noted or protested when acceptance is refused, and as there may be no notary in the place, the following instructions and forms are offered—it being premised that the object of protest is to afford formal evidence to all and sundry of the presentment and dishonour. In the case of a *foreign* bill it is by means of this act alone that evidence of dishonour is received by a foreign court—the protest, indeed, being in most foreign countries the sole foundation of recourse against the previous obligants; and for this reason, when any of the parties to an inland bill happens to be sued abroad, it will be requisite to effect and forward a formal protest of such inland bill.

Noting for
Non-accept-
ance.

Protesting for
Non-accept-
ance.

The statute giving the right to protest inland bills on refusal of acceptance is that of the 3 and 4 Anne, cap. 9. Under the 5th sec. it has been held that in the case of an omission to protest, the drawer or indorsers shall not be liable to costs, damages, and interest—Harris *v.* Benson,

Presentment
for
Acceptance.
Protesting for
Non-accept-
ance.

2 Stra., 910; but subsequent practice has settled that the plaintiff is entitled to recover interest from them on proof of due notice, without protest, Mr. Justice Bayley, in the case of Windle *v.* Andrews, 2 Barn. and Ald., 696, 2 Stark., 425, S. C., observing: "The principle is this, the 8th sec. provides that the Act shall not take away any remedy which the party had before. Now, before that Act by the common law the defendant was liable for interest. Although, therefore, unless in compliance with the 3 and 4 Anne the bill was protested, he is not entitled to any remedy under that statute, still the 8th sec. preserved to him his remedy at the common law, although no protest be made." By sec. 4 the bills to which the statute is applicable are those for the sum of £5 or upwards, payable within a limited time after date, and expressed to be for value received.* By sec. 6 the protest is directed to be made by such persons as are appointed by the 9 and 10 Wm. III, cap. 17, sec. 1, to protest inland bills for non-payment, and as this enactment provides that in default of a notary a known or substantial resident of the place may protest in presence of "two or more credible witnesses," it will therefore be sufficient, when there is no notary, or when he is absent, if an officer of the bank notes or protests the bill before two witnesses.†. In noting, the

Banker noting
for Non-
acceptance.

* By sec. 6 of the statute it is provided that no protest, either for non-acceptance or non-payment of an inland bill, is necessary where the amount of the bill is for less than £20. It may be observed that both this statute and the 9 and 10 Wm. III, shortly afterwards alluded to, are very loosely and obscurely drawn, or "very darkly penned," as has been expressed by Lord Hardwicke in reference to the former, in Lumley *v.* Palmer, M. T., 8, Geo. II, 2 Stra., 1000. It is remarked by Chitty that the courts have always construed the statute of Anne liberally, as "being a remedial enactment, and made for the encouragement of trade and commerce."

† It has been thought that, as proper and authentic evidence of due presentment, either for acceptance or payment, is alone required, that a memorandum of the fact made on the bill by the presenting banker himself would be sufficient in any case and independent of the notary. An unqualified person, it may be observed, performing any notarial act for emolument, is by statute liable to a penalty of £50. See the Acts 41 Geo. III, cap. 79, sec. 2, and 6 and 7 Vic., cap. 90, sec. 10. And with regard to qualification as a notary, it has been decided by the Court of King's Bench that where a person had been articled to a

bank officer will merely mark on the bill itself the date of presentation and the answer received, adding at the same time his initials as well as those of the witnesses.* On the same day the instrument of protest may be thus drawn out, an exact copy of the bill being prefixed.

Presentment
for
Acceptance.
Banker pro-
testing for
Non-accept-
ance.

notary for seven years, but during that time had served in a bank daily until five o'clock, and then went to the notary's office in the evening and presented bills of exchange and prepared protests, such was not a service as was contemplated by the 41 Geo. III, cap. 79, and that he was consequently not entitled to admission as a notary. The King *v.* the Scriveners' Company, 10 B. and C., 511. The notary (from the Latin *notarius*, and who in the law books is indiscriminately designated *registratorius*, *actuarius*, *scrinarius*, and the like) was anciently amongst the Romans a person who took notes (*notaæ*) or minutes of proceedings in the courts, and who made short drafts of writings and other instruments both public and private. After the establishment of Christianity notaries were appointed by the Pope originally to preserve the records of the Church, but afterwards for purposes almost entirely secular. By the 25 Henry VIII, cap. 21, the Papal authority was abrogated in this respect as well as in others, and the power of admitting notaries to practise was vested in the Archbishop of Canterbury, who now makes the appointment, the instrument of which decrees "that full faith be given as well in as out of judgment to the instruments to be by the notary made." This appointment is also registered and subscribed by the Clerk of her Majesty for Faculties in Chancery. The term of service and the manner of admission to practise are regulated at the present time by the above-mentioned statutes of the 41 Geo. III and 6 and 7 Vic. The business of the notary in this country appears at one time to have been more comprehensive than it is at present, the attorney or solicitor having, as regards the preparation of wills and other writings, made considerable encroachments upon it; and indeed out of London there is not an instance of a notary being able to maintain himself by his mere practice as such. At the present time the business of this public officer is limited to the authenticating and certifying examined copies of documents, and the attesting of deeds and other writings going abroad, in the noting and protesting of bills, and in the receiving affidavits of mariners and masters of vessels, and drawing up their protests. By sec. 20 of the 6 Geo. IV, cap. 87, her Majesty's consuls at foreign ports or places are empowered to do all notarial acts. And by the 3 and 4 Wm. IV, cap. 70, attorneys or solicitors or proctors residing more than ten miles from the Royal Exchange, London, may be admitted to practise as notaries upon their proving to the satisfaction of the Master of the Court of Faculties of the Archbishop of Canterbury that inconvenience is occasioned to the public by there being an insufficient number of notaries in their respective localities.

* By Bayley, 259, it is stated that in the case of *foreign* bills the protest should be made out, in the event of there being no notary public in or near the place where the bill is dishonoured, by "an inhabitant in the presence of two witnesses." It may be observed, however, that the practice in regard to the protesting of foreign bills is regulated by the custom of merchants, and that by such the presence of attesting witnesses is not held necessary in any kind of protest of the foreign bill, though at the same time we have observed that in many instances the protest of the notary is made before two witnesses.

The statute of William is confined to the *inland* bill of exchange only. It may be added that it is the practice of many of the Scottish banks to have a properly qualified notary in one of its members or officers, for in Scotland none but a notary-public can protest a bill; and it has been in that country decided that he cannot protest his own acceptance, nor a bill drawn by himself.

Presentment
for
Acceptance.
Forms of
Protest by
Banker for
Non-accept-
ance.

I.

Form of Protest for non-acceptance of an inland bill of exchange, at the instance of A PAYEE:—

DUE 4TH JUNE.

Liverpool, 1st March, 18 .

£150.

Three months after date, pay to Messrs. Melchior Carneiro de Mendoza & Co., or order, in London, one hundred and fifty pounds value received.

(Signed) MARANHAM & MOBILE.

(Addressed)

To Messrs. Spindles, Skewer, & Co.,

Bury.

(Stamp.)

At Bury, the eighth day of March, one thousand eight hundred and years. Upon which day the principal bill of exchange, above copied, was presented personally* to the above-named and designed drawees, and duly protested, in the absence of a notary public [or, there being no notary public practising in or near this place], by me, Walter Frederick Marjoribanks, of Bury, banker, subscribing at the instance of the above-named payees, not only against the said drawees for non-acceptance, their answer being "will not accept," but also against the drawers for recourse, and against all concerned for† interest, damages, and expenses present and to come, as accords before these witnesses, Frank Courtenay and Charles Trevelyan, both of the Bank of Bury.

W. F. MARJORIBANKS.

* Or was presented "at the dwelling house," or "at the warehouse," or "at the place of business," of the above-named and designed drawees, etc.

† In the case of foreign bills, the protest will here bear, in addition, for "all exchange, re-exchange," interest, etc.

Or,

II.

Form, when at the instance of AN INDORSEE :—

DUE 4TH JUNE.

Liverpool, 1st March, 18 . . .

£150.

Presentment
for
Acceptance.
Forms of
Protest by
Banker for
Non-accept-
ance.

Three months after date pay to Messrs.
Melchior Carneiro de Mendoza & Co., or order,
in London, one hundred and fifty pounds value
received.

(Signed) MARANHAM & MOBILE.

(Addressed)

To Messrs. Spindles, Skewer, & Co.,

.....
Bury.

(Indorsed) Pay to the Bank, or order.

MELCHIOR CARNEIRO DE MENDOSA & Co.

(Stamp.)

At Bury, the eighth day of March, one thousand eight hundred and years. Upon which day the principal bill of exchange, above copied, was presented personally* to the above-named and designed drawees, and duly protested, in the absence of a notary public [or, there being no notary public practising in or near this place], by me, Walter Frederick Marjoribanks, of Bury, banker, subscribing at the instance of , Esquire, as manager at Liverpool, and in name and for behoof of the Bank, the indorsees thereto, not only against the said drawees for non-acceptance, their answer being "will not accept," but also against the drawers and indorsers for recourse, and against all concerned

* Or was presented "at the dwelling-house," or "at the warehouse," or "at the place of business," of the above-named and designed drawees, etc.

Presentment
for
Acceptance.
Forms of
Protest by
Banker for
Non-accept-
ance.

for* interest, damages, and expenses, present and to come, as accords before these witnesses, Frank Courtenay and Charles Trevelyan, both of the Bank of Bury.

W. F. MARJORIBANKS.

III.

Or the form may be thus varied, the bill in this instance being addressed to a non-trader :—

On the eighth day of March, one thousand eight hundred and , I, Walter Frederick Marjoribanks, of Bury, banker, at the request of , Esquire, manager at Liverpool of the Bank, bearer of the original bill of exchange, whereof the above is a true copy, did exhibit the said original bill unto , the person upon whom the same is drawn, and demanded acceptance thereof, who answered, that he would not accept the said bill, having received no advice of the same [or did exhibit the said original bill to a man at the house of the drawee, , situate as addressed, and demanded acceptance thereof, but such demand was not complied with, and he gave for answer that the said drawee was not within, and that he had not left any orders about the acceptance of such bill], and I, the said Walter Frederick Marjoribanks, do hereby certify that there is no notary public practising in or near this place [or that the only notary public of this place is absent, or is incapacitated by illness from acting]. Wherefore I, the said Walter Frederick Marjoribanks, have protested, and by these presents do solemnly protest, as well against the drawer and the indorsers of the said original bill,

* In the case of foreign bills, the protest will here bear, in addition, for "all exchange, re-exchange," interest, etc.

as against all others whom it may concern, for* interest, damages, and costs, already and hereafter to be incurred for want of acceptance of the said original bill, in the presence of Frank Courtenay and Charles Trevelyan, both of the Bank of Bury, and witnesses specially called to the premises.

Presentment
for
Acceptance.
Forms of
Protest by
Banker for
Non-accept-
ance.

Quæ attestor,

W. F. MARJORIBANKS,

Banker in Bury aforesaid.

Upon the drawee refusing to return the bill when left for acceptance, the following form of protest may be drawn out by the banker:—

IV.

Form of protest for non-acceptance and retention of bill, at the instance of A PAYEE:—

At Bury, the eighth day of March, one thousand eight hundred and years. I, Walter Frederick Marjoribanks, of Bury, banker, having left for acceptance, with Messrs. Spindles, Skewer, & Co., Bury, on the day preceding the date hereof, a bill of exchange, dated 1st March, 18 , drawn by Maranham and Mobile, of Liverpool, upon the said Spindles, Skewer, & Co., for the sum of one hundred and fifty pounds, payable, three months after date, to Messrs. Melchior Carneiro de Mendosa & Co., or order, in London, and in the absence of a notary public [or, there being no notary public practising in or near this place,] having, on the date hereof, repaired, on behalf of the said payees, to the place of business of the said drawees, and there, addressing Samuel Spindles, the partner in trade of the said Spindles, Skewer, & Co., drawees,

* In the case of foreign bills, the protest will here bear, in addition, for "all exchange, re-exchange," interest, etc.

Presentment
for
Acceptance.
Forms of
Protest by
Banker for
Non-accept-
ance.

demanded delivery of the said bill, accepted or unaccepted, and having received for answer, “

.” Therefore I, the said Walter

Frederick Marjoribanks, on behalf of the said payees, have protested, and hereby protest, as well against the said drawees and the drawers of the said bill as against all others concerned, for non-acceptance and retention of the said bill, and for* interest, damages, and expenses, as accords before these witnesses, Frank Courtenay and Charles Trevelyan, both of the Bank of Bury.

W. F. MARJORIBANKS.

Should the drawees not be found, and both their place of business and their dwelling-houses be shut up, the protest, adapting No. III form to the circumstances, will then bear: “did take the said original bill, to present and demand acceptance of it, to the place of business of the said drawees, and afterwards to their dwelling-houses in Bury, and, finding all these places shut up, I gave three audible knocks at the doors thereof, but no one answered. And I, the said,” etc.

The protest, to be received in evidence before a Court of Law, must be written upon a stamp, and, by sec. 116 of the Stamp Act, 1870, the duty upon a notarial act, and upon the protest by a notary public of a bill of exchange or promissory note, may be denoted by an adhesive stamp, which is to be cancelled by the notary. By schedule, the amount is on—

“ Protest of any bill of exchange or promissory note;

“ Where the duty on the bill or note does not exceed

1*s.*, the same duty as the bill or note;

“ In any other case, 1*s.*”

These duties are much less than the graduated ones, 2*s.* to 10*s.*, formerly imposed.

* In the case of foreign bills, the protest will here bear, in addition, for “all exchange, re-exchange,” interest, etc.

PRESENTMENT FOR PAYMENT.—Upon the bill of exchange or promissory note arriving at maturity, a very necessary and most important step is requisite—viz., that of due presentment for payment of the instrument to the acceptor of the bill, or to the maker of the note. It is true that, in general, presentment to either is unnecessary to charge him, and that the institution of an action may be the first notice given for payment, even though the instrument be made payable on demand, the reason being that, at common law, it is the duty of the debtor to seek out his creditor to pay him. *Birks v. Trippett*, 1 Saund., 33; *Rumball v. Ball*, 10 Mod., 38; *Frampton v. Coulson*, 1 Wils., C. B. 33; *Norton v. Ellam*, 2 M. and W., 461.

To attach liability, however, to the drawer of a bill, and to the indorsers either of this instrument or of a promissory note, it is absolutely requisite to make presentment on the day when due. So far as the acceptor or maker is personally concerned, there is, indeed, no occasion for presentment at the time when due, as neither of these parties can be discharged from liability within the period fixed by the statute of limitations. It is, therefore, mainly for the sake of recourse upon drawers and indorsers that the utmost care and diligence should be exercised in all proceedings connected with the instruments in question. At the same time, however, it is not to be forgotten, with regard to the acceptor or maker, that, when either *restrictively domiciles* his instrument, presentment at that domicile is, as has been already seen, necessary, to be averred or proved in an action against him; and, when the instrument is made payable at or after "sight," presentment is, of course, essential.

If, then, presentment be not made on the day that the bill or note becomes due, all the antecedent parties will be discharged from their liability, whether on the instrument, or on the consideration for which it was given. The delay of a single day frees these parties, and a presentment

Presentment
for Payment.
Acceptor or
Maker.

Drawer and
Indorser.

Effect of
neglect in due
Presentment.

Presentment
for Payment.

before the time is unavailing, it being held, in Wiffen v. Roberts, 1 Esp., 261, that a presentment for payment on the second day of grace, the third not being a Sunday or public fast day, is a nullity.

When
Presentment
should be
made.

The presentment for payment, like the presentment for acceptance, should be made during business hours ; but in the case of traders or merchants, it has been held that a presentment, however late in the evening, will do if not made during the hours of rest ; and that likewise, although the house be shut up and no one there to give an answer. Vide Wilkins *v.* Jadis, 2 B. and Ad., 188 ; Triggs *v.* Newnham, 10 Moore, 249 ; Morgan *v.* Davison, 1 Stark., 114 ; Jameson *v.* Swinton, 2 Taunt., 224, and other cases. And in contrasting their case with that of the banker, Lord Ellenborough thus expressed himself : "A common trader is different from a banker, and has not any peculiar hours for paying or receiving money. If the presentment had been during the hours of rest it would have been altogether unavailing, but eight in the evening cannot be considered an unreasonable hour for demanding payment at the house of a merchant who has accepted a bill." Barclay *v.* Bailey, 2 Camp., 527. In Wilkins *v.* Jadis, supra, Lord Tenterden, C. J., said that "a presentment to bankers out of the hours of their business is not sufficient ; but in other cases the rule of law is that the bill must be presented at a reasonable hour ; a presentment at twelve o'clock at night, when a person has retired to rest, would be unreasonable ; but I cannot say that a presentment between seven and eight in the evening is not a presentment at a reasonable time."

Littledale, J., concurred.

Parke, J. : "A bill or note must be presented for payment at a banker's in the usual hours of business, but in all other cases it must be presented at a reasonable time. I think eight in the evening was in this case a reasonable hour."

Patteson, J. : "The question to be considered is, whether the bill was presented at the place appointed within a

reasonable time, not whether any person was there to receive it. I think the bill in this case was presented at a reasonable hour."*

Presentment
for Payment.
When made.

In the case of bankers, it is requisite that presentment be made during the period that the bank is open for public business.

When a bill or note is drawn on demand, it is immediately due and payable. A reasonable time, upon question to be determined by, it would seem, both judge and jury is, however, allowed for presentment. Ordinarily a common demand bill of exchange, if payable in the place where it is received, should be presented on the day following receipt. If payable in a place different from that in which it is received, it will be sufficient if it is forwarded by post on the day after receipt, and the party to whom it is sent has until the day following to present it.

All other bills, with the exception of Bank of England post bills, upon which there are in practice no days of grace estimated, drawn after sight, after date, or at a fixed term, as "on 15th August, pay," etc., have three days of grace allowed them before presentation for payment. This period, though it originated from a motive of favour towards the acceptor, whence the term "grace" soon came to be regarded and claimed as a right, and, as such, it is now recognized by the law.

In the calculation of the days of grace, as has been already seen, ante p. 104, the day when actually due is excluded, and the last day of grace included. Thus a bill dated 14th April, at two months' date, falls due upon June 14th, but it is not actually payable until the 17th of June; and so a bill at one day's sight, seen on 14th April, would

* In *Whitaker v. Bank of England*, 1 C., M. and R. 744, 6 C. and P., 700 S. C., Byles, 9th ed., 205, a bill had been presented at 11 a.m., and payment had been refused for want of assets; it was afterwards, on the same day, presented after banking hours, at 6 p.m., assets having in the meantime been received. It was intimated by Lord Abinger that the bank ought to have apprised the notary who presented the bill of the receipt of assets.

Presentment
for Payment.
Days of Grace.

not be payable on the 15th, but on the 18th of that month. And it will be recollect that, if the third day fall upon a Sunday, Christmas Day, Good Friday, or any day of fast or thanksgiving appointed by the Sovereign, the instrument is payable on the day previous, or on the second day of grace. 39 and 40 Geo. III, cap. 42; 7 and 8 Geo. IV, cap. 15. And that, if due on a bank holiday, it is payable on the following day.

Maturity.

Further, as to the calculation of the maturity of the bill or note, it will be also recollect that when drawn at one month, or so many months, after date, and a short month intervene without a corresponding day to the date of the bill or note, the last day of such month determines the currency of the instrument. Thus a bill dated 28th February, at one month, would become payable on the 31st of March (there being the days for maturity in March); while a bill dated 31st January, at one month after date, would be due on the 28th, or, if leap year, 29th day of February, and payable on the 3rd day of March, and not due on the 2nd or 3rd, and payable on the 5th or 6th, as has been computed by those not familiar with the subject. When it is desired that days of grace should not be allowed, it is necessary to use express words to that effect, as: "Thirty days after date, without grace, pay," etc.

How
Presentment
made.

In the demand for payment it is not requisite that this should be made to the drawee or acceptor personally, as it is his duty to leave provision for payment at his usual residence or place of business if he is not himself present.*

* The effect of domiciliation at a banker's or other particular place has been already seen ante, 177. The proceedings, as will be observed from what follows above, upon presentment for payment, differ little from those necessary to be adopted in presentment for acceptance, though it is conceived that, in the event of the acceptor's removal, less strictness is necessary to be observed in finding him out than in the case of presentment for acceptance, because he is to be held as aware when the bill becomes due, and, as said in one case, "if he chose to remove from the house pointed out by the bill as his place of residence, he is bound to leave sufficient funds on the premises." Tindal, C. J., in *Buxton v. Jones*, 1 Man. and G., 86.

His bankruptcy or insolvency is no excuse for a neglect to make due presentment, for payment might still be made for Payment, by means of friends or otherwise. *Russell v. Langstaffe*, How made. Doug., 497, and other cases.

If he has removed, the holder should endeavour to find him out; but, if he has absconded, no further trouble need be taken concerning him, and the instrument may at once be treated as dishonoured. Anon., Ld. Raym., 743, corroborated at Guildhall, Tr., 6 W. and M., before Treby, C. J. If he has gone abroad, presentment to his agent or wife will be sufficient. *Cromwell v. Hynson*, 2 Esp., 511.

In London, when one banker holds bills payable at another banker's, presentment is made at the Clearing House, and this has been held in law sufficient. *Reynolds v. Chettle*, 2 Camp., N. P. C. 596; *Harris and another v. Parker*, 3 Tyr., 370.

If the bill be accepted by an agent, presentment for payment must, in the continued absence of the drawee, be made to the agent. *Phillips v. Astling*, 2 Taunt., 206.

If the acceptor or maker be dead, and the instrument not specifically domiciled, presentment should be made to his executors or administrators. If there be no representatives, presentment should be made at the house of the deceased. *Pothier*, pl. 146, *Marius* 134, *Philpott v. Bryant*, 3 Car. and P., 244.

If the holder die, presentment should be made by his executor, although the Will be not proved. *Molloy*, B. 2, c. 10, pl. 24; *Pothier and Marius*, ut supra.

If the instrument be lost or destroyed, application for payment should, notwithstanding, be made, and an indemnity offered; and notice of non-payment should be given to the drawer and indorsers, in order that recourse may be preserved against them. When, in the case of the inland bill, the requisites of 9 and 10 William III, cap. 17, were complied with, another bill could be demanded from the drawer in place of the lost one. These requisites

Loss of Bill.

Presentment
for Payment.
Loss of Bill.

were, that the missing bill should have been drawn for more than five pounds, been payable after date, expressed for value received, and been lost within the time limited for payment, when, under such circumstances, the drawer of the bill was obliged to give another bill of the same tenor with that first given, the person to whom it was delivered giving security, if demanded, to the drawer, to indemnify him against all persons whatsoever, in case the bill, so alleged to be lost or miscarried, should be found.

Now, under the 17 and 18 Vic., cap. 125, sec. 87, in an action founded upon a bill of exchange or other negotiable instrument, the Court, or a judge, may order that the loss of such instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or judge, or a master, against the claims of any other person upon such negotiable instrument.*

Notice of
Loss.

Upon loss of the instrument, notice of the circumstance should be as widely disseminated as possible by means of

* Byles, 13th ed., 384, says that the provision in the above statute of 9 and 10 William III, cap. 17, is not peculiar to the law of England, but agreeable to the mercantile law of other countries, and adds: "Notwithstanding some authorities to the contrary, it was clearly settled that a Court of common law had no jurisdiction under this statute, a Court of law, it was said, not being able to enforce the giving of a new bill, or qualified to judge of the sufficiency of an indemnity. The relief, however, administered by Courts of equity was not confined within the letter of the statute. It would be afforded not only on such bills as are mentioned in the statute, but on others; not only before they fell due, but after; not only on bills, but on notes; not only against the drawer, but against the indorser or the acceptor; not only might a new bill be required, but payment. But the Court would not call on a party to renew or pay a lost bill without providing him with a satisfactory indemnity. Neither would the Court entertain a suit by an intended indorsee against the acceptor where there had been no actual indorsement by the payee, the bill never having become negotiable, and being destroyed. To a suit in equity by the last indorsee of a lost bill against the acceptor, the prior indorsers need not have been made parties. And now, at law, by the 17 and 18 Vic., cap. 125, sec. 87, in case of any action founded upon a bill of exchange or other negotiable instrument, the Court, or a judge, has power to order 'that the loss of such instrument shall not be set up, provided an indemnity is given, to the satisfaction of the Court or judge, or a master, against the claims of any other person upon such negotiable instrument.' This section is preserved by 38 and 39 Vic., cap. 77, sec. 21, and also by 18 and 19 Vic., cap. 67, sec. 7. Bank notes are within this Act. *McDonnell v. Murray*, 9 Ir., Com. Law Rep., 495. And half notes, per Willes, J., at Chambers, *Redmayne v. Burton*, 9 Jur., 21; and circular notes. In case of neglect to give an indemnity, plaintiff has been ordered to pay defendant's costs up to the time of so doing. *King v. Zimmerman*, L. R. 6, C. P. 466; 40 L. J., 278."

newspapers and handbills, which should contain a full and accurate description of the missing document. Written notice should at once be issued to all the parties on the instrument, and the handbills forwarded to all the banks, and to the principal bill discounters.*

If a debtor remit bills or notes by a conveyance specified by his creditor, or by post, if that be the usual mode of transmission, and they be lost or stolen, the loss will fall upon the creditor. *Warwick v. Noakes*, Peake 67. And it has been decided, both in Scotland and England, that an action cannot be maintained against the Postmaster-General, although the loss has arisen from theft on the part of a letter-carrier, for the Postmaster is only responsible for his own conduct, and not for that of subordinates, who hold their appointments directly from the Crown. See *Lane v. Cotton*, 1 Salk., 17, confirmed by *Whitfield v. Lord le Despencer*, Cowp. 754; and see the Scottish case of *Farries v. Elder and Scott*, Morrison 10103. A deputy-postmaster, however, is responsible for neglect in not duly delivering letters. *Rowning v. Goodchild*, 3 Wils., 443; *Holdern v. Dalton*, 1 C. and P., 181.

* The handbills may be to the following effect:—

TO BANKERS, BILL DISCOUNTERS, AND OTHERS.

Whereas a bill of exchange for FOUR THOUSAND POUNDS, No. 63, dated January 14, 18_____, drawn at 3 m./d. by and Co., in favour of _____, or order, upon Messrs. & Co., of _____, and by them accepted, payable at the _____ Bank, London, the number of such acceptance being M. 797, was, on the 30th March, 18_____, posted at _____, in a registered letter, and the same bill has been LOST OR STOLEN.

All persons are hereby cautioned against discounting, advancing money on, or otherwise dealing with the said bill, payment of which has been stopped.

Information respecting the said bill to be given to

.....,

.....,
Liverpool.

Or,

NOTICE TO BANKERS AND OTHERS.

The undermentioned bank draft having been surreptitiously taken, should it be presented for negotiation, you are requested to detain the same and advise the drawers:—

Draft No. _____. Dated Liverpool, 15th May, 18_____, at 14 days after date, for £_____, in favour of _____, upon _____ Bank, London, and drawn by _____ Bank, Liverpool.

**Presentment
for Payment.**
**Insufficient
Bill.**

Should the instrument appear insufficient or irregular, presentment should still be made, unless, indeed, it be drawn without that sine qua non, a stamp of sufficient value. In such a case, due presentment from the illegality of the instrument is immaterial, and the want of it would not affect the right which a holder would have for payment of the original debt. *Wilson v. Vysar*, 4 Taunt., 288.

**Bill refused
Acceptance.**

When the instrument has been refused acceptance, and the circumstance duly notified to the parties on the bill, it is unnecessary to retain the bill for the purpose of making presentment for payment, though in practice this is generally done by the banker when the instrument is not at once returned by him in the first instance.

Bill near Due.

However near maturity the bill may be when received by the holder, the latter must take all the consequences of presentation if he retain the instrument. Unless it can be presented for payment in proper time the banker will, of course, refuse the instrument, or take it for collection only.

**Payment.
Precautions
before
Payment.**

PAYMENT.—In the actual payment of the bill or note, whether by the acceptor or maker, the primary debtor on the instrument, or by any of the other parties, drawer or indorsers, or by a referee for honour,* there are certain precautions necessary to be observed, in order that all future loss upon the instrument may be prevented. When taken up by an indorser the latter should be certain that due recourse has been preserved, and that no laches on the part of the holder or any other, such as in neglect to give due notice of non-acceptance or non-payment, has deprived him of his right of relief upon the previous obligants.

By Indorser.

By Referee. A referee before paying should be certain that the signature of the party for whom he pays is authentic, for if forged he cannot of course charge the party with the amount; and before accepting or paying the drawee should be certain of the genuineness of the drawer's signature. The acceptance, as will have been already observed, admits

**By Drawee or
Acceptor.**

* As to the payer supra protest for honour, see post.

the signature of the drawer, and thus precludes the acceptor from afterwards pleading against an onerous holder that it was forged. In a case where two forged bills were presented to the drawee, one of which was paid by him without acceptance, and the other was both accepted and paid, it was decided that he could not recover back the amount from the holder, the Court holding that he ought to have satisfied himself of the authenticity of the drawer's signature before he accepted or paid, and that, having given credit to the bills by paying the one and accepting and paying the other, he and not the holder must bear the loss. *Price v. Neal*, 3 Burr, 1354. In this case, it is to be observed, considerable time elapsed before notice of the forgery was given.

On the question of recovery in a case of forgery, there has been some diversity of opinion amongst the judges; though it would seem that when the forgery has been immediately discovered and notice given, so that recourse might be preserved against the previous parties, as in the case of non-payment, the party paying, particularly when the fault is not entirely on his side, may recover back the money from the holder. In a case where bankers paid a forged acceptance which was domiciled with them, and by one o'clock in the afternoon of the following day gave notice of the forgery, it was held that they could not recover back the money from the holder to whom it was paid, the Court observing: "We are all of opinion that the holder of a bill is entitled to know, on the day when it becomes due, whether it is an honoured or dishonoured bill; and that if he receives the money, and is suffered to retain it during the whole of that day, the parties who paid it cannot recover it back. The holder, indeed, is not bound by law (if the bill be dishonoured by the acceptor) to take any other steps against the other parties to the bill till the day after it is dishonoured. But he is entitled so to do if he thinks fit; and the parties who pay the bill ought not,

Payment.
By Drawee or
Acceptor.

Forgery.

Payment,
Forgery.

by their negligence, to deprive the holder of any right to take steps against the parties to the bill on the day when it becomes due." *Cocks v. Masterman*, 9 B. and C., 902; 4 M. and Ry., 676; *Dans. and Ll.*, 329, S. C. See *Wilkinson v. Johnson*, 3 B. and C., 428; 5 D. and Ry., 403, S. C., and *Smith v. Mercer*, 6 *Taunt.*, 76; 1 *Marsh.* 453, S. C.

Presenting
Holder.
Procuration
Signatures.

The holder presenting for payment should be known as a bona fide holder, and if any of the signatures are per procuration the party, before paying, should be satisfied that there has been authority for such.

Loss

After notice of loss care should be taken that payment is made to the proper holder, and indemnity required if necessary.

Restrictive
Indorsement.

Due attention should be paid to a restrictive indorsement. And payment of the instrument should not be made before it has become due. If it be it is at the peril of the person paying. In *Burbridge v. Manners*, 3 Camp., 194, it was held that, if payment be made before the bill is due, and in the interval it gets into the hands of an onerous indorsee, he may recover, there having been no marks of payment made on the bill. In this case the bill had been paid by a person other than the acceptor four days before it was due. An acceptor, however, wishing to take up the bill some time before maturity, under deduction of interest, is at liberty to do so (and is safe when the payee's or indorsee's right on the bill is absolute), but the holder in such a case is not bound to consent.

Death of
Holder.

When, from the following circumstances, a more than ordinary alteration has occurred in the situation of the parties to a bill or note it should be particularly observed:

That in the case of a holder dying, payment should not be made to his personal representative unless the latter has a power of administering to the effects. And the party making payment should satisfy himself by examining the probate of the will, or the letters of administration.

Payment to a person acting as executor under the probate of a will is good although the will should prove to be forged. The probate, as a judicial act of the Court, being a sufficient warrant for payment. *Allen v. Dundas*, 3 T. R., 125.

That in the case of a holder's bankruptcy becoming known, payment to such bankrupt holder would be ineffectual. But all bona fide payments to or by any bankrupt, and all contracts, etc., with the bankrupt before the date of the order of the adjudication *without notice of an available act of bankruptcy* are, under the Bankruptcy Act of 1869, secs. 94 and 95, as under the previous general Bankruptcy Act, held valid.

And so, as under the old bankruptcy laws, when the holder of a bill or note can maintain an action against a party to the instrument, he may, in the event of such party's bankruptcy, prove the amount against his estate; and whatever would be a defence to an action will exclude the holder from such proof.

And if part of the amount of the instrument be received from any of the other obligants, a claim for the balance can only be made against the bankrupt's estate.

The mode of proving and the position of the bill holder have been already considered,—Part II, “Bankruptcy,”—Loss of Bill
after Proof. and we may only further add that, if after proof the bill be lost, the holder may receive dividends upon transmitting a declaration to the following effect, made and signed before a Commissioner:—

"IN THE COURT OF BANKRUPTCY.

"In the matter of Brittle, Cracknel, & Co., bankrupts.

"James Henry Vitreus, of in the county of , glass manufacturer, maketh oath, and saith that he has made a careful search for the bills of exchange, the particulars whereof are underwritten, and which have been proved, under this estate, by Oliver

Payment.

Loss of Bill
after Proof.

Calix and James Henry Vitreus, composing the firm of Calix, Vitreus, & Co., glass manufacturers, in , but that he, the deponent, has not been able to find the same, and he verily believes that the same have been lost or mislaid ; and the said deponent further saith that he has not, nor has the said Oliver Calix, his partner in trade, or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bills or any of them, nor in any manner parted with or assigned to any person or persons the legal or beneficial interest in the said bills of exchange, or any part thereof ; and that he, the said deponent, and his partner in trade, are the persons now legally and beneficially interested in the same, and entitled to receive for their own use all dividends in respect thereof, and that all dividends which have been paid or declared, or moneys received on account of or in respect of said bills or any of them, or from any other source or security, do not amount to twenty shillings in the pound, and that the dividend now payable under the above estate, and not yet received, will not make up twenty shillings in the pound.

“ BILLS ABOVE REFERRED TO.

Date.	Drawer.	Acceptor.	Sum.

“ Sworn at in the
 county of this
 day of eight }
 one thousand eight
 hundred and } “ JAS. H. VITREUS.
 Before me,
 ” }

And this should be accompanied by a letter of indemnity
in the following form, addressed to the trustee in bank-
ruptcy :—

Payment.
Loss of Bill
after Proof.

“Estate of Brittle, Cracknel, & Co., bankrupts.

“Sir,

“The undermentioned bills, proved by Messrs. Calix, Vitreus, & Co., glass manufacturers, in , under this estate, having been lost or mislaid, and the following dividend having been declared thereon, but not yet paid, viz., in the pound, amounting to , and which dividend, with all others already received, or which have been declared, or become payable, in respect of the said bills, do not amount to twenty shillings in the pound thereon; in consideration, therefore, of your paying to us, or to our order, the dividend above mentioned, we hereby undertake to indemnify you against all claims of any other person to the said dividend, or any part thereof, and from all loss, damage, and expense which you, or your executors or administrators, may sustain by reason of your making such payment to us; and if it should hereafter appear that the said sum of , or any part thereof, with the dividends already received or declared, up to this day, exceed the amount of the bills, we hereby engage to repay the same to you, with interest at the rate of five per cent. per annum from this day.

“Dated at this day of 18 .

“For partner, Oliver Calix and self, trading under the firm of Calix, Vitreus, & Co. -

“JAMES H. VITREUS.

Payment.
Loss of Bill
after Proof.

Date.	Drawer.	Acceptor.	Sum.

"JAMES H. VITREUS.
"To
"Trustee to the above estate."

Married
Woman.

Payment of the bill to a woman who has become married, and that circumstance known, should not be made without the husband's concurrence.

Agent.

Where the acceptor of a bill or the maker of a note delivers money to an agent to retire the instrument, and the agent offers the amount to the holder on condition of receiving the bill or note, but, from its being mislaid, this condition is not complied with, and the agent afterwards becomes bankrupt with the money in his hands, it has been held that the acceptor or maker is still responsible. *Dent v. Dunn*, 3 Camp., 296. For, as observed by Lord Ellenborough, "there was here only a tender, which could not extinguish the debt; plaintiff, the holder, did nothing to make the stakeholder his agent, he continued defendant's, the maker's, agent."

Powers of
Holder.

There are certain powers which a holder may exercise on the bill becoming due, and these, with the effects of payment by the various obligants, will now have to be considered.

Part Payment.

The holder, then, of a bill or note may accept part payment, for no objection can be made to that, as it is in aid of the other obligants;* and if he do not at the

* A different doctrine, however, once prevailed. In *Tassel v. Lewis*, Ld. Raym., 744, it was ruled that "if the indorsee of a bill accepts but twopence from the acceptor he can never after resort to the drawer." The same doctrine was held in *Kellock v. Robinson*, 2 Str., 745, with regard to a partial payment received from the granter of a promissory note. Thomson, 426.

same time grant a release of the remainder, or afford further time to the party paying, he may sue all the other obligants for the balance. Gould *v.* Robson, 8 East, 576, and other cases. The banker, in thus receiving payment to account, is in the custom of marking the partial payment on the back of the bill, and of acquainting the party paying that it is received without prejudice to the rights of the others.

Payment.
Part Payment.

In the event of a receipt of the partial payment not being thus marked on the bill itself, and the instrument being afterwards transferred to an indorsee for valuable consideration, the latter would be entitled to recover the full amount of the bill. Cooper *v.* Davies, 1 Esp., 463.

A mere offer not acted upon by the holder to give time to the acceptor will not discharge the drawer. Hewitt *v.*

Release.

Goodrick, 2 C. and P., 468; Badnall *v.* Samuel, 3 Price, 521. If the holder take in lieu of payment a new bill payable at a future day, and to which the drawer and indorsers of the old one are not parties, this will discharge the latter. But if a new bill be taken as a collateral security only, and without giving time, this will not have the effect of discharging the other parties. Pring *v.* Clarkson, 6 B. and Ald., 14, Abbot, C. J., observing that "in cases of this description the rule laid down is, that if time be given to the acceptor, the other parties to the bill are discharged; but in no case has it been said, that taking a collateral security from the acceptor shall have that effect. Here the second bill was nothing more than a collateral security."

If indulgence be given to an indorser all those subsequent to him will be discharged, but those preceding him will not.

The effects of payment by the different obligants as relatively affecting themselves may be thus briefly summed up. Payment at or after maturity by the acceptor, the primary and principal obligant, extinguishes the instrument,

Effect of
Payment by
different
Obligants.

Payment.
By different
Obligants.

but not payment by the drawer, who has always recourse upon the acceptor except in cases of accommodation. Payment by the first indorser does not release the acceptor or drawer, from whom he may recover after payment, but it releases all the indorsers subsequent to him. Payment by an intermediate indorser does not release the parties preceding him from any or all (the payee having indorsed) of whom he may recover, but releases all subsequent to him, and payment by the last indorser of course releases him alone and not any of the previous obligants, all of whom are liable to him.*

Notary.

In a case of payment to the notary, it appears that upon a second presentment for payment by the latter, however late in the day on which the bill falls due, the acceptor is permitted by law to pay the amount without satisfying the attendant charge of noting or protest. Custom, however, overcomes the law in this respect, or, if we may adopt from the books as an application, "consuetudo præscripta et

* "Suppose the bill," says Byles, 9th ed., 236, "to have been accepted and indorsed for value. The acceptor is the principal debtor, and all the other parties are sureties for him, liable only on his default. But though all the other parties are, *in respect of the acceptor*, sureties only, they are not, as *between themselves*, merely co-sureties, but each prior party is a principal in respect of each subsequent party. For example, suppose a bill to have been accepted by the drawee, and afterwards indorsed by the drawer and by two subsequent indorsers to the holder. As between the holder and the acceptor the acceptor is the principal debtor, and the drawer and indorsers are his sureties. But as between the holder and the drawer, the drawer is a principal debtor, and the subsequent indorsers are his sureties. As between the holder and the second indorser, the second indorser is the principal, and the subsequent or third indorser is his surety. A discharge, therefore, to the prior parties, the principals, is a discharge to the subsequent parties, the sureties; but a discharge to the subsequent parties, the sureties, is not a discharge to the prior parties, the principals.

"Where a bill is payable to the order of a third person, the payee is a subsequent party, and so a surety for the drawer. He stands in the same situation as the first indorsee and second indorser of a bill drawn payable to the indorser's order.

"It follows, therefore, that a discharge to the acceptor is a discharge to all the parties to the bill; for, if they were still liable, they could either sue the acceptor or they could not. If they could, the discharge to the acceptor would be frustrated; if they could not, they must pay the bill without a remedy over, which would extend their liability beyond their contract. So, a discharge to an indorser is no discharge of the prior indorsers, for they have no remedy against the discharged indorser; but it is a discharge of the subsequent indorsers, for if the holder could, notwithstanding, recover against them, and they could recover against the prior discharged indorser, his discharge would be frustrated; if they could not, they must pay the bill without a remedy over."

legitima, vincit legem," and it has long, we believe, been the practice of the notary not to accept the amount of the bill without his own fee being at the same time duly discharged.

In the above instances we have seen the effects of payment by the various obligants directly connected with the bill of exchange. We shall now draw attention to the consequences attending payment of the instrument by the banker on his constituent's account.

As it is the duty of the banker to be perfectly familiar with the handwriting of his client, it follows that if a forged acceptance of the latter, payable at his bank, be retired, he, and not his client, must bear the loss. But the responsibility of the banker in connection with the retirement of an instrument domiciled at his bank is not confined to the authenticity of the acceptance, but is extended to that of the indorsements, and, as the full measure of his liability in this respect is well brought out in the case of the Pelican Assurance Company *v.* Robarts, we shall here notice it at some length. This case came before the judges of the Court of Exchequer on a bill of exceptions tendered to the ruling of Mr. Justice Erle. The case had been tried before Lord Denman, when a verdict had been found against the bankers. Application was made for a new trial; the case was then argued at considerable length, and the Court, after mature deliberation, ultimately gave this judgment: "We have considered the case, and are of opinion there was no evidence to lay before the jury of any circumstances to exonerate the bankers from the ordinary liability of bankers to inquire whether the holder of a bill is the right party." Mr. Justice Erle felt bound by the decision, and when the case came before him he expressed no opinion, and the case then came before this Court on an appeal from the Court of Queen's Bench. The declaration contains special counts; it alleged that the defendants below were bankers, and

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that, in consideration that the Pelican Assurance Company would make them their bankers, they undertook and faithfully promised to be the bankers of the company, and, to the extent of the money advanced to them, to pay to the lawful holders thereof all such bills of exchange as should be accepted by the company, payable at the bank of the defendants, and not to pay any such bill of exchange to any person not being the lawful holder thereof, and to keep and render just and faithful accounts. It then stated that the company had lent money to the bankers, and that the bankers wrongfully paid to Jones, Lloyd, & Co. (not being the lawful holders) a bill of exchange for £5000, accepted by the directors of the Pelican Company ; secondly, that the bankers did not render just and faithful accounts. The bankers pleaded that they did not promise ; second, a denial of payment to Jones, Lloyd, & Co. ; third, that Jones, Lloyd, & Co. were the lawful holders of the bill ; fourth, that Jones, Lloyd, & Co. were entitled to receive payment ; fifth, payment ; sixth, a set-off ; seventh, that the bankers paid Jones, Lloyd, & Co. by the authority of the company.

The question was, to what extent bankers in general were liable in the case of payment of a bill accepted payable at their bank, where the indorsement of a bill is a forgery ; and, secondly, what were the particular liabilities of the bankers in respect of this particular transaction, and whether there was not evidence for the jury that the bankers were discharged from their liability in respect of the payment of this bill by the particular character of the transaction. The case was tried upon admissions on both sides. There were two modes adopted by the Insurance Company with regard to the payment of policies : one as regarded persons dying in London, and the other as to those dying in the country. The regulations in the latter event were these : Certificates of the death and cause of death of parties having been given, and the probate of

administration produced, the policy was to be delivered to the country agent of the company, on the back of which was to be written a receipt, signed by the claimants. Leave was then given to the agent to draw a bill of exchange upon the company for the amount of the policy, and the agent was directed to see that the bill was drawn upon a proper stamp, and, unless that was done, the bill would not be accepted by the company. This practice, however, was not communicated to the bankers. A person of the name of John Isherwood had insured his life for £5000. He died on the 23rd of May, 1849, and he appointed three ladies, of the name of Isherwood, executrixes of his will. One Winterbotham was at that time an attorney of supposed great respectability at Stockport, and he had been the attorney of the deceased, and was the attorney of the executrixes. James Tait was the local agent of the Insurance Company at Manchester. The bill of exchange in question was drawn by Tate, he having had the requisite documents produced to him. Winterbotham handed the policy to Tate, and Tate gave the bill of exchange to Winterbotham, at the same time telling him that the bill would require to be indorsed by the payees, the Isherwoods, and that it could not be done by procuration. On the 3rd January, 1850, Winterbotham sent the bill to the Stockport Bank, and received the value for it. It then bore the indorsement of the three Isherwoods, and also that of Winterbotham. The bill was then indorsed by the Stockport bankers to Jones, Lloyd, & Co. On the 6th of January, Jones, Lloyd, & Co. *presented the bill so indorsed* for acceptance at the office of the Pelican Company. The bill was, by one of the clerks of that company, examined and compared, with the leave to draw, and *he also examined the indorsements of the names of the payees*. He was satisfied that all the requirements of the company had been complied with, and then the bill was accepted by two of the directors of the company, payable at the bank

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of Robarts. On the 16th of January, the bill was presented by Jones, Lloyd, & Co. to Robarts for payment, and the money was paid by them at the Clearing House. The payment was debited to the company in their pass-book, which was sent them on the following day. At that time neither the bankers nor the company had any knowledge of the forgery, but in July, 1850, it was discovered that the supposed indorsements by the Isherwoods were forgeries by Winterbotham, who has since been transported for that act.

It was contended, on the part of the Insurance Company, that, when a bill of exchange was accepted payable at a banker's, there was an implied obligation on the part of the bankers absolutely to pay to the lawful holder of the bill, and that, notwithstanding any difficulty which the bankers might have in ascertaining their title to a bill, they must pay at their peril, and, if they pay it to a person who turned out not to be the lawful holder, they were liable to their customer, and must bear the loss.

For the bankers, it was contended that their implied obligation was not so extensive, and, with regard to bills of exchange, the ordinary obligation between the banker and constituent did not apply, but that it was a proceeding between principal and agent, and that nothing more was required than to use proper skill and ordinary diligence; and it was further contended that, under the particular circumstances of this transaction, there was ample evidence to go to the jury, either of authority to the bankers to pay this particular bill, or that the conduct of the company with respect to the bill had exonerated the bankers from the ordinary responsibility that might attach to them, supposing the rule to be so extensive as that contended for.

Sir F. Thesiger, with whom were Mr. Ogle and Mr. Barstow, was heard for the bankers.

Sir F. Kelly and Mr. Taylor appeared for the company.

In the course of the argument, Mr. Justice Maule observed that he did not know of any case where a question had arisen where the payment by a banker of a forged instrument had been sustained. What we called having money in your bankers' hands was no more than having lent money to the bankers to use as they might think proper. The company, before they accepted the bill, had believed that Jones, Lloyd, & Co. would not have sent it to them unless it had been properly indorsed. Jones, Lloyd, & Co. had placed confidence in their bankers in the country, and those bankers had relied upon Winterbotham that all was right, but, unfortunately, it turned out that Winterbotham was not to be relied upon.

Sir F. Thesiger said that a banker was bound, on the very day a bill became due, to declare whether the bill was to be honoured or dishonoured.

Mr. Justice Maule said the banker might say, I must have time allowed me to make inquiries.

Mr. Baron Parke said, if the bankers wished to be perfectly safe, they would say, We will not pay bills made payable at our bank—you must make them payable at your own house, and draw a cheque upon us for the amount.

Sir F. Kelly was about to address the Court for the Insurance Company, but

Mr. Baron Parke said: We are all of opinion that we need not trouble you. If this were the ordinary case of a bill accepted by the defendants, payable at a banker's, there would have been no question that the acceptance would have been tantamount to an order upon the bankers to pay out of the money of the customer to the person who is the lawful holder of the bill, who could give a discharge; therefore, an order to pay to the person who is named is like appointing a special agent, and the banker has no authority to pay to anybody but him. If it is in blank, or bearer, that is, an order to pay to the bearer; and the banker cannot discharge himself in account with

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Banker.

his constituent except by paying it to the person who is always entitled to give a discharge, it is the general obligation on the banker, where he permits an acceptance to be made payable at his bank. If he wishes to protect himself, he should take care to cause the person upon whom the bill is drawn to give a cheque payable to the bearer, and he would be secured by the signature of any person who brought that cheque properly under fair circumstances. This is the case of the defendants, who are in the same state with regard to the Insurance Company, unless they can show an authority to pay this particular bill. We are all of opinion this has not been shown. There was no communication directly with the bank that they might safely pay this bill; if there had been, there is no doubt they might have charged the loss to the company. It had been said that the Insurance Company had incurred the loss by their own neglect, but the authorities do not bear that out—they have reference only to a cheque. This is nothing more than the ordinary case of a bill made payable at a bank, and the bankers cannot discharge themselves unless they pay it to the proper holders. The plaintiff is entitled to recover for money had and received, but the special count for special damage could not be maintained. Judgment affirmed. The Pelican Assurance Company *v.* Robarts, Exchequer Chamber, 1st February, 1851—Sittings in Error. Present: Barons Parke, Alderson, Platt, and Justices Cresswell, Maule, Williams, and Talfourd.*

In the case of a bill payable to the drawer's order, and drawn per procuration, it should not be paid unless indorsed by the drawer himself, or the authority for the procuration indorsement be known, as in the case of other procuration indorsements.

* In the trial before Lord Denman (Court of Queen's Bench, Hilary Term, 29th January, 1849), it was contended, on the part of the Insurance Company, that the practice of the company to take the indorsement of the party entitled

Upon bankers re-discounting a bill made payable at their bank, the acceptor and indorser both being clients, the bankers, upon the instrument being presented when due, may at once pay the holders, and it will be held that such payment is on the bankers' own account as obligants, and not on behalf of the acceptor, they being entitled, should the latter not have provision for it, to charge it after such payment to the debit of their indorser. In the case of *Pollard v. Ogden*, P. R. O., of the Northumberland and Durham District Bank, decided in the Court of Queen's Bench 30th May, 1853, the indorser (drawer of the bill) disputed his liability under such circumstances and sued the bank, but a verdict was given in favour of the latter. If an acceptor accept a bill payable at his bank, this of itself is sufficient authority to the bank to pay. *Kymer v. Laurie*, 18 L. J., 218 Q. B., though it may now be said to be invariably the practice of bankers to require a separate order or advice from the client to retire the instrument. But it has been held by several cases that if the banker has sufficient funds of the client, these having been in the bank a reasonable time and within the knowledge of those acting in the bank, a refusal to pay such an instrument upon presentation will render him liable to an action at the suit of the client.

to receive the money on the policy was adopted for the purpose of having his receipt; that the bankers, when they paid the bill, did not know of the practice of the company to look at the indorsements upon the bill, and, therefore, were not relieved from making due inquiry as to the genuineness of the indorsements; that the bankers could not have known that the bill was indorsed before it was accepted; and that the acceptance was an admission of the handwriting of the drawer only.

It was likewise, in the course of the trial, observed: "This is not a question which party ought to bear the loss, because the bankers have a remedy over against Messrs. Jones, Lloyd, & Co. Where a party is the lawful holder of a bill, and represents no more to the party paying it than that he is so, he may keep the money; but where he is not the lawful holder, and makes an untrue representation to the bankers that he is so, and they have not the means of knowledge, they may recover the money back." (Dallas, J., in *Jones v. Ryde*, 5 Taunt., 488, 495; *Wilkinson v. Johnson*, 3 B. and C., 428; *Smith v. Mercer*, 6 Taunt., 76; *Cocks v. Masterman*, 9 B. and C., 902; *Ancher v. The Bank of England*, 2 Dougl., 637.) In this case, the original wrong was in the bank at Stockport, and Messrs. Jones, Lloyd, & Co. were not the lawful holders of the bill."

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Though money be remitted to the bank by the acceptor to pay his bill domiciled there, the banker is not liable to the holder in an action for money had and received, unless he have assented to hold the money for the purpose for which it was remitted. *Williams v. Everett*, 14 East, 582; and other cases; and where bankers had received money for the express purpose of taking up a bill two days after it became due, and upon tendering it to the holders and demanding the bill, found that they had sent it back protested for non-acceptance to their indorsers, it was held that the bankers, having received new orders not to pay the bill, were not liable to an action by the holders for money had and received, when, upon the bill being got back and tendered to them, they refused to pay the money. *Stewart v. Fry*, 7 Taunt. 339. The holders had not, in the first instance, required the money to be kept for their use, and thus virtually relinquished their claim over it.

The banker may refuse to receive money from an acceptor to retire his bill if he has no account, the former, indeed, having a perfect right, if he think proper, to decline receiving lodgments from, or transacting business with, any one.

As the cancellation by mistake of the signature of a party to the bill does not operate as a discharge to that party (see *Novelli v. Rossi*, 2 B. and Ad., 757; *Fernandez v. Glyn*, 1 Camp., 426; *Roper v. Birkbeck*, 15 East, 17; *Wilkinson v. Johnson*, 3 B. and C., 428; and *Warwick v. Rogers*, 5 M. and Gr., 340), so, where a banker has irregularly or by mistake cancelled a domiciled instrument, there is no responsibility attachable to him by that act. Thus, in *Warwick v. Rogers*, a banker cancelled a domiciled acceptance on the day it was due, having funds of the acceptor; but the latter, finding himself insolvent, sent word on that day to the banker not to pay the bill. The banker then wrote on the instrument "cancelled by mistake—orders not to pay," and returned it to the holder. It was held that

Cancellation
by Mistake.

the holder could not sue the banker for money had and received. That though the acceptance was an acceptance defaced and cancelled in point of fact, it was an acceptance by mistake. And in *Prince v. Oriental Bank Corporation*, being an appeal from the judgment of the Supreme Court of New South Wales, Privy Council, 23–24 January, 1878, 26 W. R., 543, 3 L. R., Ap. Ca., 325, it was held that the cancellation in error of the signatures of the makers of a promissory note marked also as paid on the day it was due, and corrected before it was sent back and before any communication of payment to the makers or holders, and uncommunicated entries in the books of the bank showing that in the first instance it had been as between the branches treated as paid, were ineffectual to charge the bank with the receipt of the amount of the note.

The telling desk of a bank is considered as a neutral desk provided for the use of both banker and constituent. And it has been held in the case of *Chambers v. Miller*, 32 L. J., C. P., 30, that as soon as the money is laid down upon it by the banker, to be taken up by the receiver, the payment is complete.

In payment of a bill at maturity the holder is entitled to demand money, but he, of course, may receive satisfaction if he chooses in any other shape.*

The Receipt Stamp Act, 43 Geo. III, cap. 126, is repealed, but under the Stamp Act, 1870, Sched. tit. Receipt, secs. 120–123, it would appear that a receipt should be given on

* “When the acceptor or drawee of a bill,” says Byles, 9th ed., 24, “proposes to pay by a cheque, the holder should not, in strictness, give up the bill till the cheque is paid. It has, however, been held that the holder is not guilty of neglect in giving up the bill before the cheque is paid; but it is believed not to be usual at this day with London bankers to exchange bills for cheques, and it is doubtful whether they would now be protected in so doing. If a creditor, however, in payment of any other debt than a bill or note, take a cheque, and the banker fail or the cheque be dishonoured, the creditor’s remedies remain entire.”

And at page 218 it is said: “Yet it has been held that an agent is justified, by the usage of trade, in delivering up the bill on receiving a cheque, though that cheque is afterwards dishonoured. But the drawers or indorsers, in such a case, would be discharged, for they have a right to insist on the production of the bill, and to have it delivered up on payment by them.”

Payment.
Cancellation
by Mistake.

Payment in
Bank.

Payment
otherwise
than in
Money.

Receipt.

Payment.
Receipt.

payment of the bill being obtained. But the receipt may be written without a stamp on the bill itself. It is customary, however, to evince payment by either the cancellation or destruction of the instrument.

Non-payment.

NON-PAYMENT.—Until the passing of the statute 9 and 10 Wm. III, cap. 17, no *inland* bill of exchange could be protested for non-payment, but the privilege thus accorded has been unimportant in its effects as relating practically to the rights of a holder. The statute, as has been remarked, secures and does not impair the right derived from the common law, and by the latter the recovery of interest and damages on bills dishonoured is held absolute upon proof of due notice of dishonour. We should, therefore, without much comment have passed over this part of the subject were it not that noting, if not protesting, for non-payment is now very frequently effected, and which may be countenanced for the reason stated for the observance of the same ceremony in the case of non-acceptance—ante page 215. Under the statute the bills, it may be observed, to which the right of protesting for non-payment is secured are those for the sum of five pounds or upwards, expressed to be for value received, and drawn payable at a certain number of days, weeks, or months after date. Failing a notary (and upon which point we would beg to refer to what has been stated ante page 216), the bank officer will protest the bill before two witnesses. The form of noting will be the same as that practised in the case of non-acceptance, the banker merely minuting on the face of the instrument the date of presentment and the reason if assigned for, in this instance, non-payment, together with his initials and those of the witnesses. The instrument of protest, when this is necessary to be drawn, may be made out in the following form :—*

Noting and
Protesting by
Banker for
Non-payment.

* As to the stamp and its adhibition on the instrument of protest, see ante page 222.

I.

Protest of an inland bill of exchange for non-payment at the instance of a holder :—

Non-payment.
Forms of
Protest by
Banker for
Non-payment.

DUE 4TH JUNE.

£150.

Liverpool, 1st March, 18 .

Three months after date, pay to us, or our order, in Bury, one hundred and fifty pounds, value received.

(Signed) MARANHAM & MOBILE.

(Addressed)

To Messrs. Spindles, Skewer, & Co.

.....
Bury.

(Signed) SPINDLES, SKEWER, & Co.

(Indorsed) MARANHAM & MOBILE.

Pay to the Bank, or order.

(Signed) THOS. COTTON.

At Bury, the fourth day of June, one thousand eight hundred and years. Upon which day the principal bill of exchange, above copied, was, where payable, duly protested, in the absence of a notary public [or, there being no notary public practising in or near this place], by me, Walter Frederick Marjoribanks, of Bury, banker, subscribing, at the instance of Esquire, as manager at Liverpool, and in name and for behoof of the Bank, the indorsees and holders, not only against the above-named and designed acceptors for non-payment of the contents, but also against the drawers and indorsers, jointly and severally, for recourse, and against all concerned for* interest, damages, and expenses, as

* In the case of foreign bills, the protest will here bear, for "all exchange, re-exchange," interest, etc.

Non-payment.
Forms of
Protest by
Banker for
Non-payment.

accords before these witnesses, Frank Courtenay and Charles Trevelyan, both of the Bank of Bury.

Quæ attester,

W. F. MARJORIBANKS.*

Or it may be thus varied, and without mentioning the name of the holder :—

II.

DUE 4TH JUNE.

£150.

Liverpool, 1st March, 18 . . .

Three months, etc.

At Bury, the fourth day of June, one thousand eight hundred and years. Upon which day I, Walter Ferderick Marjoribanks, of Bury, banker, subscribing at the request of the holder of a bill of exchange, whereof the above is a true copy, did exhibit the said original bill of exchange unto Messrs. Spindles, Skewer, and Company, Bury, the persons upon whom the same is drawn, and demanded payment thereof, who answered that “ ”,

* In a case of payment for honour, there would fall to be added to the protest :—

Afterwards, on the fifth day of June aforesaid, before me, the said W. F. Marjoribanks, and witnesses, appeared A. B. of Bury, and declared that he would pay the bill of exchange before protested, under protest for the honour, and upon the account, of Thos. Cotton, the second indorser on the said bill, holding, nevertheless, the said second indorser, and all others concerned, always bound, and obliged for reimbursement according to law and custom.

Quæ attester

W. F. MARJORIBANKS.

Principal £150.

Charges £ _____ :

Received 5th June, 18 , from A. B., the sum of , being the amount of principal and charges on the said bill.

W. F. MARJORIBANKS,

For the Bank.

and I, the said Walter Frederick Marjoribanks,
do hereby certify that there is no notary public
practising in Bury aforesaid [or that the only
notary public of this place is absent, or is inca-
pitated by illness from acting]. Wherefore I,
the said Walter Frederick Marjoribanks, at the
request aforesaid, have protested, and by these
presents do protest, not only against the above-
named and designed acceptors for non-payment
of the contents, but also against the drawers and
indorsers, jointly and severally, for recourse, and
against all concerned for* interest, damages, and
expenses, as accords before these witnesses, Frank
Courtenay and Charles Trevelyan, both of the
Bank of Bury.

Quæ attestor,

W. F. MARJORIBANKS.†

When a partial payment of the bill has been made, the form of protest for non-payment may be thus :—

* In the case of foreign bills, the protest will here bear, for "all exchange, re-exchange," interest, etc.

† In the case of a foreign bill having passed through several hands, and containing references for need in the same place by both the drawer and one of the indorsers, there will fall to be added to the protest :—

And afterwards I, the said W. F. Marjoribanks, and witnesses applied to A. B. for payment of the said bill, pursuant to the reference in case of need thereon, who declined to interfere in the payment of the said bill. Whereupon I, the said W. F. Marjoribanks, and witnesses, applied to C. D. and Co. for payment of the said bill, pursuant to another reference in case of need thereon, who declared that they would pay the same under protest for honour, and on account of E. F. & Co. indorsers thereon : holding the said indorsers, the preceding indorsers, the drawer of the said bill, and all others concerned, always obliged unto them, the said declarants, for their reimbursement in due form.

Quæ attestor,

W. F. MARJORIBANKS.

Charges

Received , 18 , from Messrs. C. D. & Co., the sum of , amount of the above protested bill, together with charges thereon.

W. F. MARJORIBANKS,

For

Non-payment.
Forms of
Protest by
Banker for
Non-payment.

£500.

III.
DUE 13TH NOVEMBER.

Stockport, 10th August, 18 .

Three months after date, pay to A. Hatton,
or order, in Blackburn, Five hundred pounds,
value received.

(Signed) L. CASTOR.

(Addressed)

To Messrs. Sombrero, Son, & Co.

.....
Blackburn.

(Signed) SOMBRERO, SON, & CO.,

Indorsed thus:—

Pay Giles Wideawake or order.

(Signed) A. HATTON.

(Signed) GILES WIDEAWAKE.

Memorandum of partial payment indorsed thus:—

13th November, 18 .—Two hundred and
fifty pounds paid to account.

At Blackburn, the thirteenth day of Novem-
ber, one thousand eight hundred and years.

The principal bill of exchange above copied,
was, where payable, duly protested, in the absence
of a notary public, by me, Alexander Chancellor,
manager of the Bank of Blackburn, at Blackburn,
subscribing, at the request of the holder, against
the above-named and designed acceptors for non-
payment, and against the drawer and indorsers,
jointly and severally, for recourse, and against all
concerned, for* interest, damages, and expenses,
deducting the partial payment above mentioned,
as accords in presence of Henry Cassilis and
Arthur Vernon, both of the Bank of Blackburn,
witnesses.

In testimonium veritatis,

ALEX. CHANCELLOR.

* In the case of foreign bills, the protest will here bear for “all exchange,
re-exchange,” interest, etc.

When the original bill has been lost before maturity, and
a copy is presented for payment, the protest for non-
payment may be thus :—

Non-payment.
Forms of
Protest by
Banker for
Non-payment.

IV.

(Copy of the Bill.)

At , the day of ,
years. Upon which day, and in the absence of a
notary public, I. A. B., of , banker,
subscribing at the request of J. K., did exhibit a
copy of the original bill of exchange* (whereof a
copy is above written) unto E. F., the person upon
whom the same is drawn, and by whom the said
original bill† has been accepted, and which has
been lost or mislaid, and the same being this day
due, I demanded payment thereof, and the said
E. F. answered ‡ that he would not pay the same.
Wherefore I, the said A. B., at the request aforesaid,
have protested, and by these presents do protest,
not only against the above-named and designed
acceptor, but also against the drawer of the said
bill, and all other parties thereto, and against all
concerned, for § interest, damages, and expenses,
for want of payment of the said bill, of which the
original being lost or mislaid, the said copy || was
exhibited in lieu thereof, and payment demanded
in presence of these witnesses, L. M. and N. O.,
both of

Quæ attestor,

A. B.

* Or, when applicable, "did exhibit the second of exchange," (whereof, etc.

† Or, "the first of exchange of the same set" has, etc.

‡ Or, where indemnity has been offered, "answered, although security to
indemnify him was offered," that, etc.

§ "All exchange, re-exchange," interest, etc., in the case of foreign bills.

|| Or, "second of exchange."

Non-payment.
Witnesses to
Protest.

Time of
Noting or
Protesting
Inland Bill.

Notarial Fees.

With regard to the witnesses to a protest, the mere mention of their names and designations in the instrument is held sufficient, it not being usual for them to exhibit their signatures.

In practice, the noting or protesting of the inland bill is always effected on the last day of grace, and after the hours of banking. We are not certain whether invariable custom would now be held to sanction this mode of procedure, for the evident meaning of the statute (unless, indeed, we similarly interpret it with the language of the Hebrew and the Greek, by which that which is done on the last of a series of days, months, or years is expressed as done after them) is, that the noting or protesting should not be effected until the day following the last day of grace, the words of the enactment being, "And after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested," etc., see sec. 1 of the 9 and 10 William III, cap. 17. And though, by the case of *Leftly v. Mills*, 4 T. R., 170, it has been held that the right of protesting does not extend to bills payable after sight (see terms of the statute, ante page 248), it is still common to have these instruments noted upon dishonour.

By section second of the Act, the fees of a notary for protesting are fixed at sixpence, and it has been said in the above case of *Leftly v. Mills* that no more can be legally exacted, though it is always the practice of the notary to charge a larger amount. With regard to the recovery of the costs for noting, it was, in the case of *Kendrick v. Lomax*, 2 Cromp. and Jer., 405, 2 Tyr., 439, asked by Baron Bayley of the counsel during the argument, "Have you ever known a single instance where the expense of noting has been recovered on an inland bill of exchange? I have made the inquiry of Lord Tenterden, who says that it is his practice at nisi prius never to allow

it." And, in delivering judgment, the same judge said : "Without deciding the point, from investigating the practice of that part of the Court likely to be cognisant of it, and also of the chief justices in the Courts of King's Bench and Common Pleas in London and Middlesex, I am much disposed to think that the plaintiff cannot recover the costs of noting unless they be stated by way of special damage in the declaration." However, by sec. 5 of the Act of 18 and 19 Vic., cap. 67, to facilitate the remedies on bills of exchange and promissory notes, it is provided that "the holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour as he has under this Act for the recovery of the amount of such bill or note."*

Under sec. 2 of the 9 and 10 William III, cap. 17, with reference to protests for non-payment, and under sec. 5 of the 3 and 4 Anne, cap. 9, as to protests for non-acceptance, it is directed that such protests shall, *within fourteen days after they are made*, be sent, or notice thereof given, to the party from whom the bill was received. This, however, does not dispense with the ordinary due notice of the bill's dishonour in either case; and it may be added that the provisions in question of these Acts seem to have had the effect of misleading the framers of the 12 Geo. III, cap. 72, sec. 41, relating to the time for giving notice on inland bills in Scotland.

Though noting or protesting, either for non-acceptance or non-payment, is in general, as we have seen, unnecessary

Non-payment.
Notarial Fees.

Transmission
or Notice of
Protest.

Noting and
Protesting of
Foreign Bill.

* The charge by the notaries of the city of London for noting bills drawn upon or addressed at the house of any person or persons residing within the city is 1*s. 6d.*, and without the city the amount varies according to distance. In the country the charge is regulated by the distance for presentment. When the distance is from two to three miles from the notary's office, there is, besides the exaction of an additional fee of 1*s. 6d.*, the charge for omnibus or cab fare, and, when the distance exceeds three miles, a reasonable additional charge is made for the extra distance, loss of time, and inconvenience, besides the omnibus or cab fare.

Non-payment.
Noting and
Protesting of
Foreign Bill.

in the case of the inland bill, it is altogether the reverse with the foreign bill of exchange. The noting and drawing out of the protest in both cases of dishonour is, by custom, absolute with regard to the latter, and it is by means of the protest that evidence of dishonour is alone received by a foreign Court. *Rogers v. Stephens*, 2 T. R., 713; *Gale v. Walsh*, 5 T. R., 239; *Orr v. Magennis*, 7 East, 359; and see *Brough v. Perkins*, Ld. Raym., 993, and *Molloy* 281. In the case of non-acceptance, the noting should be effected on the day on which refusal of acceptance is made, and the protest should be drawn out likewise on the same day. In non-payment, the noting should be effected on the last day of grace, and in general practice the protest is almost invariably drawn out at the same time.*

Partial.

If a part of the amount of a bill be tendered upon the day it becomes due, such part may be received, but it will be necessary to protest for non-payment of the remainder.†

Notice of
Dishonour.

In issuing notice of dishonour, either for non-acceptance or non-payment, it is now decided that information of the protest, in addition, is sufficient to parties abroad without transmitting, as was formerly thought necessary, a copy of the protest. *Goodman v. Harvey*, 4 Ad. and E., 870. And, to foreign obligants, notice should be issued on the day of refusal, if a post leaves then; if not, upon the first

* In law, it has been held that the protest for non-acceptance or non-payment may be drawn out at any time, if truly antedated, before the commencement of an action. Thus, in *Chaters v. Bell*, 4 Esp., 48, Lord Kenyon held that, if the bill was regularly noted for non-payment at the time when due, the protest might be made at a future period; that a protest was necessary before litigation, and must be averred and proved in the action, but that the want of it afforded no ground to the indorser before an action for refusing payment. On the case being afterwards tried before Lord Ellenborough, his lordship expressed the same opinion. The point, however, being considered of great importance, was reserved for the opinion of the Court on a special verdict, but was never argued. *Selwyn*, 9th ed., 360 S. C. In *Goostrey v. Mead*, Bul., Ni. Pri. 272, relating to protest for non-acceptance, it was held that the bill might be noted on the day of refusal, and the protest drawn out any day after, and dated as on the day of noting. This opinion was afterwards referred to in *Orr v. Magennis*, supra.

† For the form of this kind of protest by the banker, see ante page 252.

post day, or by the first ordinary mode of conveyance thereafter. Leftly *v.* Mills, 4 T. R., 174; Muilman *v.* D'Eguino, 2 H. Bla., 565. Should an obligant, having his residence in this country, be abroad at the time of dishonour, notice of protest is not necessary. Cromwell *v.* Hynson, 2 Esp., 511, in which case the defendant, at the time of dishonour, was not in England, but in Jamaica, where he indorsed the bill, which was drawn there; yet, as his wife resided at his house in Stepney, it was held sufficient that notice of dishonour was left there, and without any memorial of protest.

Non-payment.
Notice of
Dishonour.

In relation to international law, the protest and notice of dishonour are regulated by the law of the country where International Law. the bill is payable. Thus, in the case of a bill drawn in this country on Paris in favour of an English payee, and accepted payable in Paris, notice of dishonour for non-payment was given to the plaintiff, an English indorsee, in time according to the French but too late according to the English law. On the same day the plaintiff received notice he transmitted it to the defendant, the payee. In the action brought it was contended by the latter that the requisites of the notice which was received in England should, as between the indorsee and himself, both domiciled in England, be regulated by the English law. But the Court of Queen's Bench held that the bill being payable in France was to be considered even, as between the indorsee and indorser here as a French contract, and that the French law as to notice of dishonour must therefore so far prevail. Rothschild *v.* Currie, 1 Q. B. Rep., 43.

In our courts, in the case of a bill payable and protested abroad, the mere production of the protest attested by a notary public, or where there is no such functionary, by an inhabitant in the presence of two witnesses, will, without further proof of the signatures or affixing of the seal, be held evidence of the dishonour of the bill. But a protest made in England must be proved by the notary who made

Evidence of
Dishonour.

Non-payment.

it and by the subscribing witness, if any. Anon., 12 Mod., 345; Chesmer *v.* Noyes, 4 Camp., 129.

Place of Protest.

With regard to the protesting for non-payment of bills drawn payable at a place not being the place of residence of the drawee, it has been thus enacted by 2 and 3 Wm. IV, cap. 98:—

"Whereas, doubts having arisen as to the place in which it is requisite to protest for non-payment bills of exchange, which, on the presentment for acceptance to the drawee or drawees, shall not have been accepted, such bills of exchange being made payable at a place other than the place mentioned therein to be the residence of the drawee or drawees thereof; and it is expedient to remove such doubts. Be it therefore enacted, etc., that from and after the passing of this Act, all bills of exchange wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place other than the place by him or them therein mentioned to be the residence of the drawee or drawees thereof, and which shall not, on the presentment for acceptance thereof, be accepted, shall or may be, *without further presentment to the drawee or drawees*, protested for non-payment in the place in which such bills of exchange shall have been, by the drawer or drawers, *expressed to be payable*, unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof, on the day on which such bills of exchange would have become payable had the same been duly accepted."

Protest of Foreign Bill by Banker.

In the absence of a notary, the bank manager will draw out the protest for non-acceptance or non-payment, which is of the same form as that for the inland bill, with the addition of "all exchange and re-exchange," before "interest, damages, and expenses."*

* For the various forms of protest by a banker, where there is no notary in the place, or where one is not at hand, see ante pages 218-22, non-acceptance; and 249-53, non-payment.

Of these charges, exchange, as a term, seems to have derived its origin from the bill being payable or exchangeable in a different denomination of money from that of the country in which it was drawn. The word, as now used, is applicable to the premium or discount previously paid or received for a bill drawn in one place or country, and payable in another, that premium or discount necessarily varying with the supply of, or demand for, such bills. Re-exchange arises from the dishonour of such instruments, and is the expense incurred in raising the amount by a new bill or redraft, which the holder is entitled to draw upon the original drawer, or the indorser. An illustration of the whole subject is thus given in the case of *De Tastet v. Baring*, 11 East, 265. A merchant in London draws on his debtor in Lisbon a bill in favour of another, for so much in the money of Portugal, for which he receives its corresponding value at the time in English money, and that corresponding value fluctuates from time to time, according to the greater or lesser demand there may be in the London market for bills on Lisbon, and the facility of obtaining them; the difference of that value constitutes the rate of exchange on Lisbon. The like circumstances and considerations take place at Lisbon, and constitute in like manner the rate of exchange on London. When the holder, therefore, of a London bill drawn on Lisbon is refused payment of it in Lisbon, the actual loss which he sustains is not the identical sum which he gave for the bill in London, but the amount of its contents, if paid at Lisbon, where it was due, and the sum which it will cost him to replace that amount upon the spot by a bill upon London, which he is entitled to draw upon the persons there, who are liable to him upon the former bill. That cost, whatever it may be, constitutes his actual loss, and the charge for re-exchange; and it is quite immaterial whether he, in fact, re-draws such a bill on London, and raises the money upon it in the Lisbon

Non-payment.
Exchange and
Re-exchange.

Re-exchange.

Non-payment. market—his loss by the dishonour of the Lisbon bill is exactly the same, and cannot depend on the circumstance whether he repay himself immediately by re-drawing for the amount of the former bill, with the addition of the charges upon it, including the amount of re-exchange, if unfavourable to this country at the time, or whether he wait till a future settlement of accounts with the party who is liable to him on the first bill here; but that party is, at all events, liable to him for the difference, for, as soon as the bill was dishonoured, the holder was entitled to re-draw. That, therefore, is the period to look to. It ought not to depend on the rise or fall of the bill market, or exchange, afterwards; for, as he could not charge the increased difference by his own delay in waiting till the exchange grew more unfavourable to England before he drew, so neither could the party here fairly insist on having the advantage if the exchange happened to be more favourable when the bill was actually drawn. Where re-exchange has been recovered on the dishonour of a foreign bill, it has not been usual to prove that, in fact, another bill was re-drawn. If the quantum of damage is not to be ascertained by the existing rate of exchange at the time of dishonour, the rule will become extremely complex for settling what is to be paid on the bill between different indorsees, each of whom takes it at the value of the exchange when he purchased it. If, then, the amount of the re-exchange between the two countries at the time of the dishonour be the true measure of damage which the holder at Lisbon was entitled to receive from his indorsee in England, and that re-exchange consist of the amount of a bill on London, which would put the holder of the dishonoured bill in the same situation as if he had received the contents of it, when due, in Lisbon, it cannot make any difference whether the exchange between Lisbon and London at the time were carried on directly, or through the medium of another. The more

circuitous and difficult it was, the greater would be the loss of the holder by the dishonour.*

Non-payment.
Re-exchange.

Of the parties liable to the charge of re-exchange, it has been said that the acceptor is exempt, his obligation merely extending to payment of the principal sum, with the legal interest that may be due thereon. *Woolsey v. Crawford*, 2 Camp., 445; *Napier v. Schneider*, 12 East, 420. But *Bayley*, 353, questions whether the acceptor should not be held liable in payment when, by his breach of contract, the expense of re-exchange is actually incurred, and refers to *Pothier*, who says he ought to pay.† And, in *Francis v. Rucker*, Ambler 672, the drawer was, in effect, allowed, though as a claim of damage, to prove it under a

* On this point, *Byles*, 9th ed., 401, says: "Re-exchange is the difference in the value of a bill, occasioned by its being dishonoured in a foreign country in which it was payable. The existence and amount of it depend on the rate of exchange between the two countries. The theory of the transaction is this: A merchant in London indorses a bill for a certain number of Austrian florins, payable at a future date in Vienna. The holder is entitled to receive, in Vienna, on the day of the maturity of the bill, a certain number of Austrian florins. Suppose the bill to be dishonoured. The holder is now, by the custom of merchants, entitled to immediate and specific redress, by his own act, in this way. He is entitled, being in Vienna, then and there to raise the exact number of Austrian florins, by drawing and negotiating a cross bill, payable at sight, on his indorser in London, for as much English money as will purchase in Vienna the exact number of Austrian florins, at the rate of exchange on the day of dishonour, and to include in the amount of that bill the interest and necessary expenses of the transaction. This cross bill is called, in French, the retraite. The amount for which it is drawn is called, in low Latin, ricambium; in Italian, ricambio; and, in French and English, re-exchange. If the indorser pay the cross or re-exchange bill, he has fulfilled his engagement of indemnity; if not, the holder of the original bill may sue him on it, and will be entitled to recover in that action the amount of the retraite, or cross bill, with the interest and expenses thereon. The amount of the verdict will thus be an exact indemnity for the non-payment of the Austrian florins in Vienna on the day of the maturity of the original bill. According to English practice, the retraite or re-exchange bill is now seldom drawn, but the right of the holder to draw it is settled by the law merchant of all nations, and it is only by a reference to this supposed bill that the re-exchange—in other words, the true damages in an action on the original bill—can be scientifically understood and computed. It is plain that, whether the indorser gain or lose by the re-exchange, depends (except in so far as relates to the expenses) on the rate of exchange between the two countries. If the value of the Austrian florin, measured in pounds sterling, has risen, the holder will be entitled to recover more than the original amount of the bill in English money; but, if the value of the Austrian florin has declined, then the indorser may not be liable to repay as much English money as the bill was originally drawn for, unless the interest and expenses cover or exceed the difference."

† See *Pothier*, pl. 117. The same view is taken by several of the Scottish Institutional Writers.

Non-payment.
Re-exchange.

commission against the acceptor. See same case, cited in 2 Brown's Chancery Cases, 599. If the drawer has thus a claim of relief against the acceptor, which he would seem to have from the last-mentioned case, there appears to be no reason why a holder should not have the same privilege. It has been decided, however, in the above cases of Woolsey and Napier, that he can only claim the amount, with interest and costs of dishonour, and that, for the recovery of re-exchange, he must look to the drawer.

If there be thus doubt with regard to the liability, direct or indirect, of the acceptor, there is none in so far as the drawer or indorser is concerned, and in his case it is recommended by Chitty, 8th ed., pp. 188 and 668, that the amount of re-exchange and charges generally should be limited on the bill or indorsement thus: "In case of non-acceptance or non-payment, re-exchange and expenses not to exceed £ . ." And he states, p. 188, that any holder taking a bill with such words will be bound by the limit. If this condition be not made, the drawer, or indorser with whom the re-drawing terminates, will be liable for the amount of the accumulated re-exchange, no matter how great may have been the number of parties through whom the bill has been returned. *Mellish v. Simeon*, 2 H. Bla., 378. In this case, which was decided by the Court of Common Pleas, a bill was drawn in London upon Paris, and negotiated through Holland; before it became due the French Government prohibited the payment of any bill drawn in England, in consequence of which it was dishonoured and sent back, through the different hands by which it had before been negotiated, to London; the re-exchange between Paris and Holland raised the bill from £603 19s. 10d. to £905 13s. 9d., and the re-exchange between Holland and London to £913 4s. 3d., which the plaintiff, the payee, paid; and upon an action by him against the drawer, Eyre, C. J., left it to the jury whether the defendant was liable for the re-exchange occasioned by returning the bill

through Holland, and they found that he was. An application was made for a new trial upon the ground that the defendant was not liable for the re-exchange, because there was no default in him, the payment being prohibited by the Government of France; but the Court held it immaterial why the bill was not paid, that as it was not paid he was liable to all the consequences, of which the re-exchange was one, and the rule was refused.

Non-payment.
Re-exchange.

In an action against the drawer of a bill drawn in this country, and accepted and payable abroad, and dishonoured by non-payment, evidence is not admissible to prove a usage among merchants here to entitle the holder, at his option, to demand from the drawer the amount of the re-exchange, or the sum which he gave him for the purchase of the bill—this being a usage which in terms contradicts the written instrument. *Suse and others v. Pompe and another*, 8 C. B., N. S., 538.

If there be no exchange, either direct or circuitous, between two foreign places, re-exchange cannot be claimed. *De Tastet v. Baring*, 11 East, 269, 270. But the holder is entitled to the damage incurred from not obtaining money for the bill at the place of payment. In a case where a bill drawn in this country on India, and payable in star pagodas, was returned protested for non-acceptance, the plaintiffs were held entitled to claim from the defendant at the rate of ten shillings per pagoda, and five per cent. on its amount from the expiration of thirty days after notice to him of its return, this rate being by custom held to cover exchange, interest, and all other charges. In this case the bill had been negotiated with the plaintiffs in India at the then current rate of six shillings and sixpence per pagoda. Vide *Auriol v. Thomas*, 2 T. R., 52, decided by the Court of King's Bench. And in the case of bills drawn from the British West India Islands on this country, and returned dishonoured to the drawer, there is by custom a certain percentage, which includes all incidental expenses

Damages, etc.

Non-payment.
Damages, etc.

charged in the name of damages, and this, along with the rate of interest exigible, varies in the following manner:—

Upon bills returned for non-payment to the drawer in

ANTIGUA—Damages ten per cent., with eight per cent. interest from the date of protest.

BARBADOES—Ten per cent., with six per cent. interest from date of presentation.

GRENADA—Ten per cent., with eight per cent. interest from time of bill falling due.

JAMAICA—Eight per cent., with six per cent. interest from date of the bill.

ST. VINCENT—Ten per cent., with eight per cent. interest from time of bill falling due.

TRINIDAD—Ten per cent., with six per cent. interest from the date of protest.

And in Berbice and Demerara, portions of the British Colony in Guiana, twenty-five per cent., with six per cent. interest from the date of presentation.

Usually, when a bill drawn from the West Indies is dishonoured, it is retained by the holder in this country, and the protest is sent out to the drawer, who may, by legal process, be compelled to give security in the island for the amount. And see *Gantt v. Mackenzie*, 3 Camp., 51, and *Laing v. Barclay*, 3 Stark., 41.

In the case of war, it is undecided whether any exchange or re-exchange can be allowed between this and the enemy's country. In *De Tastet v. Baring*, when the bill, which was drawn in London on Lisbon, became payable, Lisbon was in possession of the French, and was blockaded by a British squadron. The question which arose as to whether there could be legally any re-drawing with a country in possession of the enemy was, however, not decided, the jury having rejected the claim made for re-exchange, on the ground that there was then no regular course even of circuitous exchange between Lisbon and

London, notwithstanding that there had been an instance or two, about the time, of an exchange of bills betwixt these places through the medium of other bills upon Hamburgh and America.

Besides re-exchange, all other reasonable expenses attending the dishonour of a bill, with the amount of interest upon the principal sum, are recoverable by the holder. At common law the rule is that interest is not recoverable unless there be an express stipulation for interest, or unless where interest is due by the usage of trade. But to this rule bills and notes formed an exception, interest having been in most instances recoverable upon them. Now, by the 3 and 4 Wm. IV, cap. 42, sec. 28, it is provided that interest shall be recoverable on all debts from the time when such debts are payable by virtue of any written instrument, and on all other debts after a written demand and notice that interest will be claimed from the date of the demand.

When the interest is reserved in or made payable by the bill or note it is recoverable as part of the debt, but when not reserved in the instrument it is recoverable merely by way of damages for breach of contract, and in such a case it has been held that where the charge for interest has been incurred by the negligence of the holder himself a jury are justified in reducing or withholding it altogether. Thus, in *Du Belloix v. Lord Waterpark*, 1 D. and R., 16, the jury refused to give interest on a promissory note which had lain overdue many years, and the Court, on motion, would not increase the verdict by giving it; and in the case of *Cameron v. Smith*, 2 B. and Ald., 308, it was held by Mr. Justice Bayley, that the jury "may even allow nothing in name of interest, in case they are of opinion that delay of payment has been owing to the fault of the holder." When the interest is expressly reserved in a bill payable on demand, or at a certain time after date (as, three months after date pay to, etc., with lawful interest), the interest

Non-payment.
Damages, etc.

Non-payment.
Interest.

is computed from the date of the bill and not from its maturity, and this on the ground that the words "with lawful interest," or other words of similar import, must mean interest from the date of the instrument, as, without such words, interest would be payable from the time of maturity. *Hopper v. Richmond*, 1 Starkie, 507; *Kennerly v. Nash*, ibid, 452; *Doman v. Dibden*, 1 R. and M., 380. When the interest is not reserved it is calculated from the time that the bill or note becomes due, the interest on an instrument payable on demand running in such case from the time of demand. *Upton v. Lord Ferrers*, 5 Ves., 801; *Blaney v. Hendricks*, 2 Bla., 761, and other cases. If there has been no demand except the action, interest may be given from the service of the writ of summons. *Pierce v. Fothergill*, 2 Bing., n. c., 167.

In one case, *Walker v. Barnes*, 5 Taunt., 240, it has been held that the drawer or indorser of a bill, or indorser of a note, is only liable to pay interest from the time he receives notice of the dishonour.

A person who guarantees the due payment of a bill is liable for interest. *Ackermann v. Ehrensperger*, 16 M. and W., 99.

Interest is now carried down to the period when final judgment is signed, and not, as formerly, to the commencement of a suit, though it has been properly questioned whether it should not in justice run until actual payment of the money. In Scotland, interest, by statute, runs till payment.

After a tender of payment, interest ceases to run. *Dent v. Dunn*, 3 Camp., 296.

The rate of interest allowed is five per cent. per annum when interest is not reserved, or when the rate is omitted, and this, indeed, applies in law and equity to all agreements in which no stipulation of interest has been made. When a higher rate of interest, however, is allowed in a foreign country, it may be recovered here.

With regard to the mode of effecting protest by the notary, the sufficiency of a demand of payment or acceptance, before protest, by his clerk, has been questioned.*

Non-payment.
Protest by
Notary.

* In a correspondence which took place on the subject between the London and Liverpool notaries and Chitty, the chief reasons urged by the former in support of the demand by a clerk was, besides frequency of the practice, the inconvenience that the notary would be personally subjected to in the number of demands and the smallness of the remuneration. These, however, appear to be satisfactorily enough answered by Chitty, who says: "If the inconvenience to the notary by attending in person to demand and make protest is too great for so small a remuneration, then he must charge more, which he may do in case of foreign bills; and if there are not sufficient notaries to perform the duty, then the number must be increased, but no inconvenience can justify the certificate of a falsehood"—alluding to the terms of the instrument of protest, which must be in name of the notary, to whom credit is attached as a public officer, and which expressly states that the presentment and demand are made by himself. And again: "It will be observed that it by no means follows that all bills must be presented by a notary, for it suffices, in the first instance, for any individual to present bills for acceptance or payment, and all that is requisite is that the foreign bills which have already been dishonoured should on the same day be again presented by the notary himself." And he adds it as his opinion that "it is clear that, strictly, the notary himself must in all cases make demand of payment before he protests." In a subsequent letter from the secretary of the society of London notaries, and one which closes the correspondence, attention is called to the terms of the 9 Geo. IV, cap. 24, regulating the protesting of bills in Ireland. In this Act it is stated that the notary "may present, or cause the bill to be presented," words, it is contended, which "are not to be construed as conferring a power, but as confirming and referring to a previously existing and recognized daily practice, a fact capable of proof, by reference to notarial registers of one hundred years' date." See the correspondence, as detailed in Chitty on Bills, 8th ed., n. 494 to 497. In concluding his observations in the text, this learned author says: "It will be observed that the statute 9 Geo. IV, cap. 24, sec. 13, regulating the protesting of bills of exchange in Ireland, states that the notary may present, or cause the bill to be presented, which would seem to import that he may send any third person to make presentment. Certainly in prudence, whilst the question remains undecided, every notary having to protest a bill or bills to any considerable amount should *himself* demand payment, and make his own minute of the answer given by the drawee to him; for, supposing that it should hereafter be considered that it was his duty so to have acted, and that in consequence of any omission a drawer or indorser should be discharged, he would be liable to compensate the loss." In the 10th ed. of his Treatise, however, edited by Messrs. Russell and MacLachlan, it is stated, 315, n., that the doubt in question "seems to have been suggested by the language of Buller, J., in *Leftly v. Mills*, 4 T. R., 175; but, as he was speaking of a presentment and demand which had been made by a banker's clerk in order to a protest, the language of the learned judge is not applicable to the case supposed. Besides, the common practice of notaries to use their clerks for that purpose, as it would be impossible otherwise to conduct their business, is a practice which is amply justified by the law of principal and agent, and not questioned in any case which has occurred before the courts of England."

In foreign countries the demand and protest must be made by the notary himself or some public officer, or by two reputable inhabitants. In France two notaries must protest, or one notary or one huissier and two witnesses. An eminent Scottish author, in referring to the practice of a demand by the notary's clerk, thus observes: "In the case of bills or notes to be protested in Scotland, there appears to be no warrant either from principle or authority for adopting such a practice." Thompson, 476. With regard to the increase of

Non-payment.
Conflict of
Laws.

In connection with the international law of contracts, the decisions of the English courts have been both few and contradictory, the latter circumstance hardly to be wondered at when it is considered how widely the leading jurists differ in their opinions, not only on the application of the principles of international law, but also on the principles themselves.

Lex Loci
Contractus.

The general rules, however, which our Courts profess to adhere to are that the construction or interpretation of contracts is to be governed by the *lex loci contractus*, or law of the place where they are made, and that generally with a contract entered into in one country to be performed in another, the latter is to be deemed the country in which the contract is made; and the remedy by the *lex fori*, or the law of the place where the remedy is sought. Accordingly, with reference to the *lex loci contractus*, it has been held that an acceptance null by the law of the country where it is given is not binding here. Thus, by the law of Leghorn, if the drawer of a bill fails and the acceptor has not sufficient effects of the drawer at the time of acceptance, the acceptance becomes void. Under these circumstances an acceptor at Leghorn instituted a suit there, and had his acceptance vacated. Afterwards he was sued in England as acceptor, and he filed his bill for an injunction and relief. Lord Chancellor King held that the plaintiff's acceptance of the bill having been vacated and declared void by a competent jurisdiction, that sentence was conclusive, and bound the Court of Chancery here, and granted a perpetual injunction to enjoin the defendant from suing upon the bill. *Burrows v. Jemimo*, 2 Stra., 733. And see collaterally the case of *Rothschild v. Currie*, ante page 257, as to protest and notice of dishonour; and of the time of payment of the

the notarial charge, as suggested above, there would perhaps be little objection to this in any case were it so augmented as to diminish the chance of the bill's dishonour by the negligence or indifference of the acceptor, or to act as a preventive to the obligation being undertaken without a certain prospect of its fulfilment. And under such circumstances there would be little exception to the protest in the case of the inland bill.

bill, this, generally, as in the days of grace, is regulated by the law of the place where the bill is payable. The rule, however, when the bill is drawn in a place using a style different from that of the place in which the instrument is payable, will be afterwards seen under the old and new styles of computing time.

Non-payment.
Lex Loci
Contractus.

A bearer note or bill made and payable here is transferable by delivery abroad, although mere delivery is inoperative by the law of the place where the delivery is made. *De la Chaumette v. The Bank of England*, ante 155.*

With regard to the remedy as governed by the *lex fori*, it may be first of all mentioned that it has been held that the substance or extent of the remedy, if not the form of it, should be regulated by the law of the place where the contract is made, and not by that of the place where the remedy is sought. As in the case of a person who had entered into a contract in France to be there performed, it was decided that, as the fulfilment of the contract could not in that country be enforced by arrest, he could not in this country be holden to bail. *Melan v. the Duke de Fitzjames*, 1 Bos. and Pul., 141. Now, however, this doctrine has given place to the rule that the remedy must be taken in all respects according to the law of the country where the remedy is sought. Thus, in a case where a debt was contracted between two foreigners in Portugal, and they afterwards came to England, the creditor caused the debtor to be arrested for the debt. The debtor produced evidence that the law of Portugal did not allow of arrest for debt, and he therefore claimed to be discharged; but it was decided that he was not entitled to such relief, Lord Tenterden observing: "A person suing in this country must take the law as he finds it; he cannot, by virtue of

* In *Trimby v. Vignier* 1 Bing. 151, it was held that the indorsement of a bill drawn in France, being from irregularity invalid by French law, it was invalid here, as the contract and indorsement being made in France must be governed by the law of France. But see *Wynne v. Jackson*, n., following page.

Non-payment.
Lex Fori.

any regulation in his own country, enjoy greater advantages than other suitors here, and he ought not, therefore, to be deprived of any superior advantage which the law of this country may confer. He is to have the same right which all the subjects of this kingdom are entitled to." *De la Vega v. Vianna*, 1 B. and Ad., 284. And parties trading abroad in such a manner as would constitute a partnership in this country may sue as partners here for consignments made, though they are not at liberty to sue as such at the place abroad. *Shaw v. Harvey*, M. and M., 226. And with regard to the time of suing, it has been held that, though by the law of the country where the contract was made the party would have forty years to proceed on it, he would only have six years here. *British Linen Company v. Drummond*, 10 B. and C., 903. So, where the payee of a French promissory note must have brought his action within five years in France, it was held that he might bring it here within six years. *Huber v. Steiner*, 2 Bing., N. C., 202.*

Revenue
Laws.

And in respect of the revenue laws of foreign independent states, these are altogether disregarded by our Courts, which have even given effect to contracts in fraud of the private subjects of a foreign country. *Smith v. Marconnoy, Peake*, Ad. 81. And see, amongst a number of other cases, *James v. Catherwood*, 3 D. and R., 190, in which it was said by Abbot, C. J.: "In the time of Lord Mansfield it became a maxim that the Courts of this country will not take notice of the revenue laws of a foreign state. There is no reciprocity between nations in this respect. Foreign states do not take any notice of our stamp laws, and why should we be so courteous to them when they do not give effect to ours? It would be productive of prodigious inconvenience if in every case in which an instrument

* It has also been decided that a holder might recover here on a bill drawn in France on a French stamp, though, in consequence of its not being in the form required by the French code, he had failed in an action brought in France. *Wynne v. Jackson*, 2 Russ., 351. But see *Trimby v. Vignier*, n., preceding page.

was executed in a foreign country we were to receive in evidence what the law of that country was, in order to ascertain whether the instrument was or was not valid."*

Non-payment.
Course in
Connection
with Foreign
Contracts.

It is considered, however, that a different view should be taken, and one more in consonance with the precepts of the revealed Word, which should be accepted as the fountain of all law. And it, perhaps, may be a matter of question whether, instead of the distinctions observed by our Courts in adjudicating upon foreign transactions, complete effect (unless, of course, in the case of contracts undertaken upon immoral grounds, or contrary to the law of nations) should not be given to the contract in the same manner as if the action were brought in the country itself where the contract was made. The better to ensure this, there is little doubt but that the members of an exalted and liberal profession like that of the law would be the last to hesitate enriching their minds and enlarging their views by a consideration of the principles and administration of the laws of foreign realms. At least, a portion of their body might devote themselves specially to such a study, and by such means, indeed, the first step would be made towards the attainment of that uniformity in legislation or general assimilation of law which, with the advance of time, may be looked for amongst the leading nations of the world.†

* "It has been observed," says Chitty on Bills, 8th ed., n. c. p. 143, "that, in matters of *penalty*, it is certainly true that our Courts will not recognize foreign revenue laws, as appears from Folliott *v.* Ogden, 1 Hen. Bla., 135; Woeff *v.* Oxholm, 6 M. and S., 99. But that it does not seem to follow from thence that, where the validity of a *contract* is to depend upon a revenue law, the Courts of this country are not bound to recognize it. Roscoe on Bills, 383. The stamp, however," it is added, "is not any part of the *contract* itself even in this country, and which is one reason for the distinction. Upon a broad and liberal policy, one State ought not to give effect to the frauds upon the revenue laws of another, any more than one neighbour ought to sanction the frauds of the servants of another neighbour. Montesq. de l'Esprit de Lois, liv. I, c. 3; Mackintosh's Lect.; and Chitty's Com. Law, vol. i, 28, 74," etc.

† It is a matter for general congratulation that efforts are being made not only to free the "natural fairness and beauty of the laws of England" from their accumulated blemishes, but to systematize and assimilate the laws and judicial proceedings of the three kingdoms. With less costly tribunals and a more speedy administration of justice, it may be fairly assumed that many barbarous technicalities and unmeaning forms will be swept away, and the study of the law rendered less abstruse, and sooner more practicable serviceable.

Notice on
Non-payment

NOTICE ON NON-PAYMENT.—When the bill or note is refused payment, notice must, in every instance, be given by the holder to the other obligants, if he is desirous of preserving recourse against them. Though we have seen that noting or protesting for this purpose is, in the case of the *inland* bill, unnecessary, notice, on the other hand, is always requisite. It is true that it has been considered immaterial in some instances, such as when a non-acceptance of the bill has been duly advised to the others, or with reference to the drawer, when the latter has informed the holder that it will not be paid, or when he has given instructions to the acceptor not to pay; but, even in cases such as these, notice should not be dispensed with, and under whatever circumstances the prudent holder will never neglect to give direct and immediate notice to all the obligants.

In the case of the banker, if the account of his client permit, the instrument is merely returned to the latter's debit. Should circumstances, however, render it advisable to retain the bill, it is placed to the debit of an independent account, called "Returned Bill Account," and notice is issued to all the parties on the instrument. The following

An easy approach will be thus offered to that general adaptation and assimilation of law, rendered necessary by increased international communication, and the spread of civilization and Christianity.

With regard to the statute law of this country, it may, perhaps, be added, there is to be so thorough an expurgation of the statute book, that no less than 16,000 or 17,000 public general Acts, encumbering it from the time of the 1st Edward, are to be reduced to some three or four hundred, and to be presented in such a shape as will no longer give countenance to the assertion that a knowledge of them by our judges, supposed to be acquainted with all law, written and unwritten, is impossible, and that ignorance on their part must cease to be esteemed a disgrace. And we believe it is proposed, as was long since suggested by Lord Bacon, to appoint a high functionary, whose special duty it will be to prepare or superintend the framing of bills for Parliament, and to watch over them while passing through the Legislature, so as to secure the final passage of statutes, consistent and unambiguous, and clothed in such language as will render them intelligible to the general public. For such an office, a choice might, perhaps, be made with greater effect from the ranks of the solicitors, from those skilled and experienced practitioners having all the advantages of a widely varied and extensive town and country business in the great commercial centres, than from either the members of the bar or the occupants of the bench.

form of notice will be readily adaptable to the various obligants :—

Notice of
Non-payment.
Form.

The Bank,

....., 18...

No.....

To.....

Your

, due , at ,

for £ , was duly presented for payment, and is this day returned to us dishonoured. We request that the same, with charges as undernoted, be taken up by you immediately.

Your most obedient servant,

....., Manager.

Bill£

Noting.....

Commission ..

Interest

Postage

£

It is of consequence that the bill be accurately described, and, in giving notice to a prior indorser, the form should be filled up thus :—

“ Your indorsement to G. H. [i.e., the indorser’s indorsee] of C. D.’s acceptance to A. B., due,” etc.

The irregularity and insufficiency of notices of dishonour have been the occasion of numberless actions at law, and formerly the terms of the intimation were viewed with great strictness by the judges. In one case, where a notice was written by the holder’s attorney thus : “ A bill for £683, drawn by J. K. upon D. J. & Co., and bearing your indorsement, has been put into our hands by the assignees of J. R. de A., with directions to take legal measures for the

Construction.

Notice of recovery thereof, unless immediately paid to your obedient," Non-payment etc., was held insufficient. Solarte *v.* Palmer, 7 Bing., 530, Construction. affirmed in House of Lords, 1834, 1 Bing., N. C., 194.

Since the decision in this case, the Courts have shewn a disposition to put a more liberal construction upon the terms of the notice, and to consider it sufficient if it conveys only impliedly an intimation of dishonour and of demand of payment.

The notices issued by the banker, however, should be explicit and complete in every particular—description of instrument, due presentment, dishonour, and request of payment; and the above form may, perhaps, be viewed as unexceptionable in these respects, and framed so as to prevent all possibility of question or doubt. Formerly, the use of the word "dishonoured" was considered essential, and Lord Denman attached so much weight to it as to think that mention of it alone was sufficient to render the party receiving notice liable, even without an express requisition for payment.

The rules applicable to non-payment may be considered mainly the same as those relative to non-acceptance.

Time.

With regard to the time of notice, it should be always given on the same day that the bill falls due, when a refusal of payment has been made, though by law it is not necessary to issue such notice until the following day.* Between receiving and transmitting notice a day is allowed; thus, when notice is received on one day, it need not be transmitted until the day following, and this applies to

* In the case of Clowes *v.* Chaldecott, 7 L. J., 147, it was held that notice on the same day that the bill was due was good, even though no positive refusal of payment was given by the acceptor, he merely having neglected to pay on presentment.

"It has been doubted," says Byles, 9th ed., 275, "whether, seeing that the acceptor of an inland bill has, as in the case of other debts, the whole of the day on which the bill falls due to pay it, notice of non-payment can be given till the day after. But it is now settled that notice may be given, at any time after demand, on the day the bill becomes due. 'The other party,' observes Lord Ellenborough, 'cannot complain of the extraordinary diligence used to give him information.' Notice of dishonour may be given on the same day, though there be no actual refusal, if the house where the bill is payable be shut up and no one be there."

the several branches of a bank, which are in such a case looked upon as distinct holders, or separate and independent banks. *Clode v. Bayley*, 12 M. and W., 51, and other cases. It need not be observed, however, that it is preferable to transmit the notice as soon after receipt of it as possible. But, if notice be received on a Sunday, Good Friday, Christmas Day, or a public fast or thanksgiving day, it should not be transmitted until the day after, and, if refusal of payment be made on the day previous to any of these days, it is not necessary to give notice until the third day, or day following such days, though, in accordance with what has been said, it would be more advisable to issue the notice on the same day that the bill is refused payment. When Christmas Day, or any public fast or thanksgiving day, falls upon a Monday, and the bill be due and refused payment on the Saturday, notice need not, of course, be given by the holder, if he choose, until the Tuesday, or fourth day. Indeed, with regard to the reception and transmission of notice, both by common law and statute law, Sunday, Good Friday, and Christmas Day are held as "dies non," and a notice received on any of these days would not be considered as received until the following day, and the party thus receiving would, as we have seen, be legally entitled to delay notice on his part until the day after that again, or the third day after notice had been actually received by him.

Where both the parties, however, reside in the same town, the party giving notice on the second day must send it so that the other may receive it on that same day. *Scott v. Lifford*, 9 East, 347, and a number of other cases. And, in thus giving notice on the day it should be received, the party must shew affirmatively that it was posted in time to be received on that day. *Fowler v. Hendon*, 4 Tyrw., 1002. The post-mark is not conclusive evidence of the time when a letter is posted. *Stocken v. Collin*, 7 M. and W., 515.

Notice of
Non-payment.
Time.

Notice of
Non-payment.
Delay.

In some extraordinary instances, a delay in giving notice is overlooked, such as that occasioned by the intervention of a festival day enjoined by the religion of the party, for the religion of different people is respected by law; or by the death or dangerous illness of the holder, or other accident not attributable to the holder's negligence for "impossibilium nulla obligatio est." Ignorance of the residence of an indorser is likewise a ground for delay; but all reasonable diligence which is a question of fact must be exercised by the holder in discovering the residence. *Bateman v. Joseph*, 2 Camp., 463, and other cases. It is in an emergency of this kind that the mode of indorsing becomes an object of reflection to the holder, and that the utility of the plan, more than once recommended, of attaching the indorser's full address to his signature, presents itself prominently to the attention. It has been likewise said that the adoption of such a practice might act as a preventive of forgery; but, not fully admitting this, we certainly think that it has sufficient merit to render its observance, in many cases, highly advisable.

If an attorney be employed to find out the residence of the party, he is allowed a day after the discovery to inform and consult with his client, the holder, who may on the third day forward the notice to the discovered indorser. *Firth v. Thrush*, 8 B. and C., 387. When the residence of the party cannot be discovered, Chitty recommends that the dishonour of the bill or note, particularly when the amount is considerable, should be advertised in the public papers.

No delay in giving notice of non-payment, however, is allowed in instances such as the following: When the bill is lost or destroyed, or when it has been stolen from the holder, or when the acceptor or maker has died, become insolvent, or bankrupt. In all these circumstances payment must be demanded, and due notice of dishonour given to the other parties.

If, without sufficient legal excuse, a single day be missed in furnishing notice by the holder, the drawer and all the indorsers, antecedent to the holder, will be discharged from liability; and, should one of these pay in ignorance of this omission, or laches, as the lawyers term it, he cannot recover from the others, who are wholly and entirely discharged. As will have been already gathered from a previous part of this volume, the reason for such consequences attending the neglect of notice is, that serious injury might be sustained by the parties, not only from the circumstance of their remedy being impeded and rendered more precarious, but, in the drawer's case, from the opportunity being lost to him of withdrawing his effects in time from the hands of the acceptor.

In the case of a renewed bill, neglect to give notice to the drawer of such bill will free him from liability both upon it and the prior bill. *Bridges v. Berry*, 3 Taunt., 130. And this although it be expressly agreed that the taking of such second bill "was in no respect to exonerate the acceptors of the first bill, or any of the parties thereby bound, until actual payment thereof made." *Reid v. Coats*, 6 Bro. P. C., 264.

On the part of the Crown, neglect to give notice of dishonour does not, however, discharge either drawer or indorsers, for "no wrong can be imputed to the Crown."

With regard to the manner in which notice should be given, it has been held that verbal notice is sufficient, such as at the shop or counting-house of a provision dealer, merchant, draper, manufacturer, or other tradesman, in the ordinary hours of business, or at the residence of a private person; but, as this might lead to difficulty in a question of proof, besides being otherwise unbusiness-like and unsatisfactory, it should never be adopted, in every instance written notice being advisable.

To parties at a distance transmission is, of course, made by the regular post, though even where there was this

Notice of
Non-payment.

Effect of
Neglect of
Due Notice.

Verbal Notice.

By Post.

Notice of Non-payment. By Post, &c. medium; but where it was found better and more expeditious to send by special messenger, it was held that the latter mode of transmitting notice was good, and the expenses attending it recoverable. *Pearson v. Crallan, 2 Smith, 404*, where the party entitled to notice lived at a distance from a post town, and at which place the letters addressed to him usually lay for a considerable length of time.

Where there is no post the ordinary mode of conveyance can be used. And if the post does not leave on the day following that on which intelligence of dishonour is received notice need not be posted till the day after, or till the next post day. Thus, where the plaintiff received intelligence of the dishonour on Thursday morning about nine o'clock, though the post did not go out till nine o'clock at night, and no letter bag was made up on the Friday, but the plaintiff wrote on Saturday, Lord Tenterden said: "It suffices, in this case, that the plaintiff put the letter into the post on Saturday, for, if he had done so on the Friday, it would not have been forwarded till the Saturday night, and it is immaterial whether the letter lay in the post office or in the plaintiff's hands till the Saturday." *Geill v. Jeremy, Moo. and M., 61*. Any miscarriage through the post will not prejudice the party sending notice of dishonour.

Absence of Obligant.

Address.

Should the party entitled to notice have gone from home the notice should be left at his residence.*

The address of the notice should be as distinct, accurate, and full as possible. A general address has been held sufficient with regard to the drawer, who had merely dated his bill "Liverpool" or "London," the party forwarding the notice, ignorant of a more detailed address, directing

* Byles, 9th ed., 272, citing *Shelton v. Braithwaite, 8 M. and W., 252*, says that "if a party, whose name is on a bill, direct a notice to be sent to him, when absent, at a distance from his residence, so that its transmission thither, and thence to the prior parties, will occupy more time than if the notice had passed through the ordinary place of residence, a notice to him at the substituted and more distant place will, it seems, not only be a good notice as against him, but also a good notice as against prior parties."

to "Liverpool" or "London" only, and, indeed, the giving such a general address by the drawer implies that a letter so directed will find him. In the case of an indorser, however, such a general address would be held insufficient, unless the party forwarding the notice could prove that it was duly received by the indorser. *Walter v. Haynes*, 1 R. and M., 149. In this case, Abbott, C. J., observed : "Where a letter fully and particularly directed to a person at his usual place of residence is proved to have been put into the post office, this is equivalent to a proof of delivery into the hands of that person, because it is a safe and reasonable presumption that it reaches its destination ; but where a letter is addressed generally to A. B. at a large town, as in the present instance, it is not to be absolutely presumed, from the fact of its having been put into the post office, that it was ever received by the party for whom it was intended. The name may be unknown at the post office, or, if the name be known, there may be several persons to whom so general an address would apply. It is, therefore, always necessary in the latter case to give some further evidence to show that the letter did in fact come to the hands of the person for whom it was intended."

An exact copy of the notice should be kept by the banker, and the address fully entered in his "Register of Letters Transmitted," with, as is customary in such record, the hour when forwarded, the amount of postage, and the initials of the messenger posting or delivering the notice, in order that ample and satisfactory evidence may be furnished, if required, in a Court of law.*

Any party to the bill, though not the actual holder of it at the time, may give notice upon hearing of its dishonour

Notice by whom given.

* Quoting a number of authorities, Byles, 9th ed., 271, says : "The post-marks in town or country, proved to be such, are evidence that the letters on which they are were in the office to which those marks belong at the time of the dates of such marks. But they are not conclusive evidence. A duplicate original, or an examined copy, or oral evidence of a written notice of dishonour, are admissible, without notice to produce the original."

Notice of Non-payment.
Address.

Notice of
Non-payment.

By
whom given.

to any other preceding obligant whom he may select, and such notice will enure to the benefit of all between them on the bill. So that a drawer or indorser, having due notice from any party to the bill, may be sued by a subsequent obligant from whom no notice of dishonour had been received. For in such a case the drawer or indorser is already "authoritatively informed that the bill is dishonoured; he is enabled to take it up if he pleases, and he may immediately proceed against the acceptor or prior indorsers," per Lawrence, J., in *Jameson v. Swinton*, 2 Camp., 373; and in *Wilson v. Swabey*, 1 Starkie, 34, where it was objected that notice had not been given by the party suing, Lord Ellenborough said "that notice from any person who was a party to the bill was sufficient," and the plaintiff had a verdict.

By Banker.

Should the holder place the instrument in the hands of his banker to obtain payment, the banker will be considered as a holder in his own right, and he has a day to give notice to his client, and the client another day to give notice to the antecedent parties. Thus, in the case of *Scott v. Lifford*, 9 East, 347, where the plaintiff's bankers presented a bill due on the 4th of June, and gave notice on the 5th to the plaintiff, who transmitted notice on the 6th to the defendant, it was held that the plaintiff had communicated the notice in reasonable time, and was entitled to recover. And in the case of *Langdale v. Trimmer*, 15 East, 291, the plaintiff lodged a note with his bankers, it became due on the 25th February, was presented and dishonoured, and on the 26th it was again presented and refused. Notice was then immediately given to the plaintiff, who, on the day following, issued notice to the defendant. Both notices were held to be in time by the Court, who observed that "the banker presented the bill as a distinct holder at the time, and not as identified with his constituents." But in *Haynes v. Birks*, 3 Bos. and Pul., 599, Lord Avanley, C. J., expressed as his opinion that the banker was bound to give

notice on the very day that the bill was returned, if he could do so by using ordinary diligence.

Notice of
Non-payment.

When the party entitled to notice becomes bankrupt, the approved practice is to give notice to both himself and, if appointed, to his trustee—official assignee under the old bankruptcy laws.

If the party be dead, notice should be given to his personal representatives, if they can, with reasonable diligence, be found. If they cannot, then it should be sent to the residence of the family of the deceased.

Before closing this part of the subject, it may be further remarked that notice should be given to those who are transferors of the bill by mere delivery, and to those who may have guaranteed the payment, in order that all ground may be removed for their pleading loss or damage by the omission of notice.* And it may be also mentioned, that if the instrument be domiciled at a banker's, notice of its dishonour need not be given to the acceptor or maker, for

To
Transferors
by Delivery.
To
Guarantors.
Acceptor.

* It has been already seen, that a party transferring a bill without indorsement is not liable on the instrument. Neither is he liable on the consideration, should the instrument be dishonoured, unless it were delivered by him on account of an antecedent debt. In such a case, it is conceived, he would be entitled to due notice of dishonour. On this subject there is no small confusion in the cases; but the holder cannot do wrong, in acting as recommended in the text, by invariably giving notice to the party from whom the instrument is received, unless, indeed, it have been taken as an absolute discharge. And see Mr. Justice Coleridge, in *Turner v. Stones*, 1 Dow. and L., 131, in whose judgment the various authorities are discussed. In *Van Wart v. Woolley*, 3 B. and C., 445, it is observed by Abbott, C. J. : “If a person deliver a bill to another without indorsing his own name upon it, he does not subject himself to the obligations of the law merchant; he cannot be sued on the bill, either by the person to whom he delivers it, or by any other. And, as he does not subject himself to the obligations, we think he is not entitled to the advantages. If the holder of a bill sell it without his own indorsement, he is, generally speaking, liable to no action in respect of the bill. If he deliver it without his indorsement upon any other consideration, antecedent or concomitant, the nature of the transaction, and all circumstances regarding the bill, must be inquired into, in order to ascertain whether he is subject to any responsibility. If the bill be delivered and received as an absolute discharge, he will not be liable; if otherwise, he may be. The mere fact of receiving such a bill does not show it was received in discharge.” The transferor, by delivery, warrants that the bill or note is not forged or fictitious. *Jones v. Ryde*, 5 Taunt., 489, and other cases. And if he transfer an instrument, knowing it to be of no value, he may in all cases be compelled to refund the consideration. *Fenn v. Harrison*, 3 T. R., 759. The transferor by delivery, however, is not liable to a subsequent transferee.

It is not essential that a party guaranteeing payment by the *acceptor* should have notice, presentment to charge the acceptor being unnecessary.

Notice of Non-payment. he makes the bankers his agents, and consequently presentation to and refusal by them is equivalent to presentment to and refusal by the acceptor or maker himself.

Acceptance Supra Protest. **ACCEPTANCE FOR HONOUR SUPRA PROTEST.**—The methods—introduced, it may be noted, not by the English common law, but by the general law merchant—by which a bill may be protected after dishonour, are by the acceptance for honour supra protest, and by the payment for honour supra protest. These may be effected with both the inland and the foreign bill of exchange, though it is in connection with the latter that they become of most consequence, and are in general most resorted to, as, from the nature of the foreign bill, more inconvenience and a heavier amount of expense is entailed upon its return than with the inland bill.

By whom. The acceptance for honour supra protest, called in French “acceptation par intervention,” is generally effected by a stranger out of regard to the drawer or some of the indorsers, and that without the necessity of previous communication between them, when the drawee refuses to accept, has absconded, or has otherwise failed to accept.*

And the drawee himself, when he does not wish to accept the bill, may accept supra protest for the honour either of the drawer or of an indorser.† By the statute of 6 and 7

* “For the purpose,” says Bayley, 176, “either of promoting the negotiation of a bill where the drawee’s credit is suspected, or to save the reputation and prevent the suing of some of the parties where the drawee either cannot be found, is not capable of making himself responsible, or refuses acceptance, an acceptance by a stranger is not uncommon; and it is called an acceptance for the honour of the person on whose account it is made, and enures to the benefit of all the parties subsequent to that person.”

† And in such a case the act of honour may be to this effect:—

On the day of , one thousand eight hundred and , I, A. B., of , banker, subscribing, do hereby certify that the original bill of exchange for pounds, above copied, and protested for non-acceptance, was this day exhibited by me in the absence of a notary public [or there being no notary public practising in or near this place] to G. H., the drawee, who declared that, notwithstanding he would not accept the said bill in the form in which it was drawn, yet he would accept the same under protest for honour, and on account of C. D., the drawer [or for honour and on account of E. F., the indorser], holding the said drawer

Wm. IV, cap. 58, post page 287, it seems to be assumed that, previous to an acceptance for honour, the bill is protested, and this precautionary measure should not be overlooked by either the holder or the person accepting for honour. Of the method of accepting supra protest our text writers, from Beawes, pl. 38, downwards, state that the acceptor supra protest must personally appear before a notary public with witnesses, and declare that he accepts such protested bill in honour of the drawer, or an indorser, or generally for honour, and that he will satisfy the same at the appointed time, and then he must subscribe the bill with his own hand thus: "Accepted supra protest in honour of J. B.," etc. This mode of accepting, however, is not generally adhered to in practice in this country, it being usual in the case of the merchant or trafficker to accept through the intervention of a clerk or agent, and without witnesses being called. Upon the intended acceptor for honour declaring to the notary his intention to accept, an act of honour which, under the Lex Mercatoria, is held indispensable, is drawn out, and the acceptance is made on the bill, and should be to this effect:—

Accepted supra protest for honour and for account of the drawer, A. B. [or, as the case may be, the third indorsers, J. & Co.], and will be paid at our counting-house with charges, if regularly presented when due.

£.....

Charges.....

K. L. & Co.*

Liverpool, 15th August, 18 .

[or the said indorser, all prior indorsers, if there be such, and the drawer], and all other proper persons responsible to him, the said G. H., for the said sum, and for all interest, damages, and expenses incident thereto, as accords before these witnesses, J. J. and K. L., both of Quæ attestor,

A. B.,

Banker in aforesaid.

* The act of honour, if necessary by the banker, may be in these terms:—

On the 15th day of August, one thousand eight hundred and , I, R. S., of , banker, subscribing, do

Acceptance
Supra Protest.
Liability.

The party accepting for honour subjects himself to payment of the amount, but, to charge him, the holder must first duly present the instrument for payment to the drawee, unless, as we have seen ante p. 258, when dispensed with by the Act of 2 and 3 Wm. IV, cap. 98, and have it noted or protested for non-payment; because, as by the following cases, the acceptance for honour is not an absolute undertaking to pay at all events, but merely a collateral conditional engagement to pay if the drawee do not; and because the latter may, though he has refused acceptance, be in a situation to pay upon the bill arriving at maturity. Hoare *v.* Cazenove, 16 East, 391, and Williams *v.* Germaine, 7 Barn. and Cr., 468; and see also Pothier, No. 137.

An acceptor supra protest for the honour of the drawer has only relief against the latter, and is liable for the amount to all the indorsers; and an acceptance supra protest generally, or not expressing for whose honour it is made, is always held to be for the honour of the drawer.

An acceptor for the honour of an indorser has relief against that indorser, and all those prior to him on the bill, but not against those subsequent to him.

Second
Acceptance
Supra Protest.

Though we have seen that after an acceptance of the bill there cannot be a second, yet after an acceptance supra protest for the honour of one obligant, the bill may by another individual be again accepted supra protest for the

hereby certify that the original bill of exchange for pounds,
above copied, and protested for non-acceptance, was this day exhibited
by me in the absence of a notary public [or, there being no notary
public practising in or near this place] at the counting-house of K.
L. & Co., who declared [or, who declared through their agent on
their behalf] that they would accept the said bill supra protest for
the honour of A. B., the drawer [or of J. & Co., the third indorsers],
holding the said drawer [or the said indorsers, all prior indorsers, and
the drawer] and all other proper persons responsible to them, the said
K. L. & Co., for the said sum, and for all interest, damages, and
expenses incident thereto, as accords before these witnesses, M. N.
and O. P., both of .

Quæ attestor.

R. S.,
Banker in aforesaid.

honour of another obligant. Generally, however, the second is only effected on the failure of the first acceptor supra protest before maturity of the instrument.

An acceptance supra protest may be made for part of the amount of the bill.

A holder is in no case obliged to take an acceptance supra protest for honour. This has been expressly adjudged in the case of *Mutford v. Walcot*, 12 Mod. R., 410, Ld. Raym. 575, adverse to the authority of Beawes, who maintains, pl. 27 and 36, that a holder cannot refuse an acceptance for honour if the credit of the person offering it is good, or if the latter offer sufficient security.

PAYMENT FOR HONOUR SUPRA PROTEST.—Upon refusal of payment of the bill, any party in connection with the instrument, including the drawee, may pay it supra protest for honour, and a stranger is at liberty to do so without any previous request or authority from the party for whose honour he pays.* Before paying, however, the payer for honour should see that the instrument has been formally and regularly protested for non-payment. And he should, in his turn, declare before a notary, for whose honour he pays.† If the instrument be drawn payable at a place different from the residence of the drawee, it may, without

* “The reason,” says Chitty, 8th ed., 544, “of this exception to the general rule, precluding a party from constituting himself the creditor of another without his concurrence, it has been observed, is, that it induces the friends of the drawer or indorsers to render them this service; it tends to prevent the great expense attending the return of a bill, and preserves the credit of the trader.”

And, with regard to the acceptor intervening, it is remarked, 542, that “if he have previously made a simple acceptance, he cannot pay in honour of an indorser, because, as acceptor, he is already bound in that capacity. He may, however, when he has accepted a bill without having effects of the drawer in his hands, and no provision has been made by the drawer for payment, suffer the bill to be protested, and then pay supra protest, in which case he will have a remedy on the bill against the drawer; but that seems unnecessary, excepting as a precaution with regard to evidence, for without it he might, in an action for money paid, though not on the bill, recover all money paid without consideration.”

† The preceding forms of the Act of honour on acceptance supra protest may be readily adapted to the case of payment supra protest.

Payment
Supra Protest. the necessity of further presentment to the drawee, be protested for non-payment at that place. 2 and 3 William IV, cap. 98, ante p. 258.*

Rights of
Payer. The payer supra protest can claim repayment from the party for whose honour he pays, and from all those liable to that party on the instrument.†

Presentment
to Drawee. If the bill has been previously accepted supra protest, it must, as we have seen, be duly presented for payment to the drawee, unless when dispensed with under 2 and 3 William IV, cap. 98, and be protested for non-payment by him before the acceptor supra protest can be sued.

* The passing of this Act appears to have been occasioned by the decision in the case of Mitchell and another v. Baring and others, 10 Barn. and Cres. 4, which seemed to have produced doubts as to the validity of a protest in the separate place named for payment. There was this peculiarity, however, in the case in question, that it chiefly turned upon the special wording of the acceptance supra protest. A bill had been drawn on a firm at Liverpool, but payable, in the body, in London. After refusal to accept by the drawees, it was accepted by a firm in London for the honour of the payees, thus: "Accepted under protest for honour of L. R. & Co., and will be paid for their account if regularly protested and refused when due." The bill became due on the 1st November, and was then presented for payment by the plaintiffs, the holders, to the drawees at Liverpool, upon whose refusal to pay it was presented on the third of the month to the defendants, the acceptors for honour, in London, when they refused payment, on the ground that it had not been presented to them on the 1st, the day when it became due, and that it ought to have been protested for non-payment in London. At the trial, before Lord Tenterden, C. J., he held that the presentment in Liverpool was regular and proper, as the drawees could not be said to refuse unless they were asked. A verdict was accordingly found for the plaintiffs; and, on a motion afterwards for a new trial, the Court, after argument, held that the bill had been properly presented, and that the verdict was correct. The above statute of William does not appear to be very skilfully worded, and, though the expression "shall or may be without further presentment," etc., would appear to leave it optional to protest in either place, yet the intention would seem to be to render it necessary that protest for non-payment should be made in the place where the bill is made payable by the drawer.

† "A man," says Byles, 9th ed., 261, "paying for honour of an indorser may, if he choose, give immediate notice to the prior indorsers, but he is not bound so to do. He may, if he please, send the protest, or the bill, or notice to the indorser for whose honour he pays, and any subsequent regular notice given by that party will suffice. It is conceived that a man cannot by paying, *supra protest*, revive the liability of an indorser already discharged by laches. And where a party pays generally for honour, without a protest, a bill already indorsed in blank, he, as an indorsee, may, it seems, sue any party on the bill. The most obvious and advantageous course to be pursued by a man desiring to protect the credit of any party to a dishonoured bill is simply to pay the amount to the holder, and take the bill as an ordinary transferee. But the holder may possibly object; for example, the bill may not have been indorsed in blank, and the holder may refuse to indorse even *sans recours*. In such an event a payment, *supra protest*, becomes essential."

In presentment for payment to the drawee, this should be made on the day that the bill falls due from its date, when payable after date; but, when the instrument is payable after sight, then upon the day on which it falls due, reckoning not from the day of presentment for acceptance to and dishonour by the drawee, but from the date of the acceptance supra protest, adding the usual days of grace. This, according to *Williams v. Germaine*, 7 B. and C., 468, though in practice the time, appears to be computed from the noting for non-acceptance. Bills, however, coming under the above statute of the 2 and 3 William IV, cap. 98, are to be treated as due on the day on which they would have become payable had they been duly accepted, without any distinction as to whether payable after date or sight.

After presentment, when not dispensed with, as seen, to the drawee, and protest for non-payment by him, presentment must be duly made to the acceptor supra protest, or he will be discharged from liability. By the 6 and 7 William IV, cap. 58, it is not necessary that the presentment, or, when that is requisite, transmission for presentment, should be made until the day following that on which the bill becomes due, the terms of the enactment being: "Whereas bills of exchange are occasionally accepted supra protest for honour, or have a reference thereon in case of need: and whereas doubts have arisen, when bills have been protested for want of payment, as to the day on which it is requisite that they should be presented for payment to the acceptors or acceptor for honour, or to the referees or referee, and it is expedient that such doubts should be removed, be it therefore declared and enacted," etc., "that it shall not be necessary to present such bills of exchange to such acceptors or acceptor for honour, or to such referees or referee, until the day following the day on which such bills of exchange shall become due; and that if the place of address on such bill of exchange of such acceptors or

Payment
Supra Protest.
Presentation
to Acceptor
for Honour
or Referee.

acceptor for honour, or of such referees or referee, shall be in any city, town, or place other than in the city, town, or place where such bill shall be therein made payable, then it shall not be necessary to forward such bill of exchange for presentment for payment to such acceptors or acceptor for honour, or referees or referee, until the day following the day on which such bill of exchange shall become due. And be it further enacted and declared, that if the day following the day on which such bill of exchange shall become due shall happen to be a Sunday, Good Friday, or Christmas Day, or a day appointed by His Majesty's proclamation for solemn fast or of thanksgiving, then it shall not be necessary that such bill of exchange shall be presented for payment, or be forwarded for such presentment for payment, to such acceptors or acceptor for honour, or referees or referee, until the day following such Sunday, Good Friday, or Christmas Day, or solemn fast, or day of thanksgiving."

Non-payment
by Acceptor
for Honour.
Promissory
Note.

Receipt.

Protest for
Better
Security.

Should the acceptor for honour not pay, it is the practice to protest for non-payment by him.

Though not of frequent occurrence, the payment supra protest of the promissory note is still sometimes made.*

On payment supra protest a receipt is given on the bill by the holder receiving the money, and the payer supra protest receives up the bill and protest.

PROTEST FOR BETTER SECURITY.—Besides the protests thus described there is another kind known as the "Protest for better Security." This is sometimes effected by the holder when the acceptor absconds, or becomes insolvent or bankrupt. It does not, however, in any way change the

* On the authority of Story (on Promissory Notes, sec. 453), it is stated by Byles, 9th ed., 262, that "the law merchant as to payment *supra protest* does not extend to promissory notes, which are not, like bills of exchange, instruments calculated or intended for circulation all over the globe. Whoever, therefore, pays a note for another person without authority, express or implied, does so at his peril.

"In ordinary cases, however," it is added, "where the note is indorsed in blank, he, of course, becomes a transferee of the note."

situation of the parties to the bill further than that by notice of such protest the drawer and indorsers are made aware of the condition of the acceptor, and are thus placed in a position to meet the bill at maturity, and so free themselves from the expense that would otherwise attend its return. Beawes, pl. 24.*

Protest for
Better
Security.

In some foreign countries, however, the law permits the holder, after such a protest, to immediately attach the property of or sue the previous obligants. And in this country, after such protest, there may be a second acceptance for honour, it being remembered that without the intervention of a protest there cannot be two acceptances on the same bill.

The protest for better security is the only legal recourse available by the holder in the event of the flight, or insolvency, or bankruptcy of the acceptor before the bill becomes due, but under such circumstances it is not an unusual practice with the banker to request his constituent to withdraw the bill.†

* The words of this authority are: "If an acceptant fails, or absents himself, the possessor is obliged, as soon as he has notice of the truth thereof, to get a protest made by a notary public in due time, and to send the same, with the bill, to the remitter, that he may procure satisfaction from the drawer; and advice should not only be immediately given to him, but even to the last indorser, that everyone concerned may be acquainted with the occurrence, and the drawer thereby empowered to order some other to pay his bill if he pleases, and thereby prevent the losses which re-exchanges bring with them."

† The following may be given as a form of the protest of a bill for better security:—

On the day of , one thousand eight hundred and , I, A. B., of , banker, subscribing, did, in the absence of a notary public, [or, there being no notary public practising in or near this place,] at the request of C. D., [or of the holder, or of the bearer,] exhibit the original bill of exchange, above copied, at the counting-house of E. F., the person upon whom the said bill is drawn, and whose acceptance appears thereon, and did present the same unto a clerk there, and demand security for the payment thereof when the same should arrive at maturity, in consequence of the said E. F. having become bankrupt, [or suspended payment, or absconded,] and I received for answer that security for the same could not be given by the said E. F., who has been declared bankrupt [or has suspended payment, or has absconded]. Wherefore I, the said A. B., at the request aforesaid, have protested, and by these presents do protest, against the acceptor of the said bill, and

Rights of
Action.
Suing.

Against
whom.

RIGHTS OF ACTION.—When an action at law is contemplated, and where there are several parties to the bill, the holder is not obliged to single out one only, but he may immediately sue, by distinct and concurrent actions, the whole, or as many as he may choose.

If the action be against an indorser, the holder suing may proceed at once against him, without making a prior demand for payment upon the drawer, a point formerly questioned.

An action may be maintained against an obligant, though he should have received notice of dishonour from the acceptor only. *Shaw v. Croft, Chit.*, 8th ed., 527; *Selw.*, 9th ed., 332; *Rosher v. Kieran*, 4 Camp., 87.*

also against the drawer and all other parties thereto, and all others concerned, for all exchange, re-exchange, interest, damages, and expenses, for want of better security for the payment of the said bill when due, as accords before these witnesses, G. H. and J. J., both of

Quæ attestor,

A. B.,
Banker in aforesaid.

* It is remarked by Byles, 6th ed., 226 (following Bayley, 5th ed., 254, on the latter of the above cases), that the holder in these cases must have either constituted the acceptor his agent for the purpose of giving notice, or, he adds, "they are not law, being at variance with the general principle laid down in *Tindal v. Brown*, and recognized in a variety of subsequent cases." There has been considerable discussion as to whether notice from an acceptor is sufficient to preserve the holder's recourse against the obligant receiving notice. In the cases of *Staples v. Okines*, 1 Esp., 352, and *Baker v. Birch*, 3 Camp., 107, where the acceptor in each had informed the respective drawers before maturity of the bill that it would not be paid, and where each of the drawers agreed to retire the instrument, it was held that the plaintiffs, indorsees, could not avail themselves of the acceptor's notice in actions against the drawers. In *Shaw v. Croft*, supra, however, where a message had been left at the drawer's house by the acceptor, stating that the bill had been dishonoured, this was held sufficient notice in an action by the holder against the drawer, Lord Kenyon observing "that it made no difference who apprised the drawer, since the object of the notice was that the drawer might have recourse to the acceptor." And, in the succeeding and later case of *Rosher v. Kieran*, which was an action by indorsees against the drawer, it appeared that on the day of dishonour the acceptor wrote a letter to the drawer, stating that he had not been able to pay the bill, and that it was then in the hands of the plaintiffs. This notice was held sufficient, and the plaintiffs had a verdict. From neither of these cases, however, does there appear to be evidence that the acceptor acted as the agent of the plaintiff, and between these cases and those of *Staples* and *Baker* there is this distinction, that, in the latter, intimation of an inability to pay was given before the term of payment had arrived; while, in the former, express notice of dishonour had been duly given on maturity, and after a demand had been made for payment. In the case of *Tindal v. Brown*, 1 T. R., 167, where a request by the maker of a note after the term of payment to the

And it has been held that a party may be proceeded against, even without notice, if he should have paid a part of the bill, or should have promised to pay the whole or part of it, or see it paid, or have done anything to shew that he still considered himself responsible on the instrument. If, however, the bill has been refused acceptance, and the party making the promise to pay after it becomes due be unaware of such refusal, he, without notice, will not be liable in an action. *Blesard v. Hirst and another*, 5 Bur., 2670; *Goodall v. Dolley*, 1 T. R., 712.

Rights of Action.
Against whom.

A party having the bill transferred to him by the payee, who has, by mistake, not regularly indorsed, may sue in name of the payee. *Pease v. Hirst*, 10 B. and C., 122. In this case, certain persons drew a joint and several note, payable to their bankers, or order. Upon two of the latter retiring from the bank, a balance was made, and the note delivered, without due indorsation, to the new firm. Held that an action on the note was properly brought in the name of the payee.

When Bill no
Regularly
Indorsed.

On payment of the amount of a note by one of several joint, or joint and several obligants, he may maintain an action against the others for their individual shares.

Joint
Obligants.

A banker who happens to pay a domiciled acceptance of a client who has no funds, cannot sue the latter upon the instrument. In such a case, the banker is not considered to stand in the position of a party paying supra protest. *Holroyd v. Whitehead*, 5 Taunt., 444; 1 Marsh., 128; 3 Camp., 530, S. C.

Banker.

defendant to retire the instrument was not held equivalent to notice by the holder, it was said that "the notice ought to purport that the holder looks to the party for payment, and a notice from another person cannot be sufficient; it must come from the holder." But this dictum has been since overruled by *Chapman v. Keane*, 3 Ad. and E., 193; and see ante 279-80. The cases alluded to, and quoted by Byles, as recognizing the general principle laid down in *Tindal v. Brown*, are *Baker v. Birch*, supra; *Pickin v. Graham*, 1 C. and M., 725, 3 Tyr., 923 S. C.; and *Harrison v. Ruscoe*, 15 L. J., 110, Exch., 15 M. and W., 231 S. C.

Rights of
Action.
Execution.

At common law neither money nor securities for money could be taken in execution at the suit of a subject. Now, however, by the 1 and 2 Vic., cap. 110, sec. 12, money, bank notes, cheques, bills, promissory notes, and other securities for money, may be taken in execution. The sheriff, after handing over the bank notes and cash to the execution creditor, may retain the cheques, bills, and promissory notes to sue upon in his own name, after receiving a bond by the creditor with two sureties for the costs of such proceeding.*

* The words of the section are : "That by virtue of any writ of fieri facias, to be sued out of any superior or inferior Court after the time appointed for the commencement of this Act, or any precept in pursuance thereof, the sheriff or other officer having the execution thereof may and shall seize and take any money or bank notes (whether of the Bank of England or of any other bank or bankers), and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, belonging to the person against whose effects such writ of fieri facias shall be sued out ; and may and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized, or a sufficient part thereof ; and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, as a security for the amount by such writ directed to be levied, or so much thereof as shall not have been otherwise levied and raised : and may sue in the name of such sheriff or other officer for the recovery of the sums secured thereby, when the time of payment thereof shall have arrived. And the payment to such sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty, or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty, or other security. And such sheriff or other officer may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied, and if, after satisfaction of the amount so to be levied, together with the sheriff's poundage and expenses, any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued. Provided that no such sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the party suing out such execution shall enter into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, the expense of such bond to be deducted out of any money to be recovered in any such action."

The writ of fieri facias, usually abbreviated *fi. fa.*, is, it may be observed, a writ issued at the instance of a person who has recovered judgment for debt or damages, commanding the sheriff to levy the amount on the goods and chattels of the defendant, and is so called from that part of it whereby the sheriff is commanded "quod fieri facias de bonis," etc., that he cause to be made of the goods and chattels of the defendant the debt or sum required. It resembles in execution the common distress for rent or taxes.

An action may be not only on but for a bill. Trover or detinue might be brought, and this by one who has property in the instrument, though not a party to it. ^{Rights of Action.} ^{Trover or Detinue.} Treuttel v. Barandon, 8 Taunt., 100.

Under certain circumstances, equity will restrain an action upon a bill. And if a plaintiff failed at law in an action of trover for a bill, he might proceed in equity to have the instrument delivered up. ^{Relief in Equity.}

By the 32 and 33 Vic., cap. 62, sec. 6, a defendant cannot be arrested on a bill unless the cause of action amount to £50 or upwards, and there be reason for believing that he is about to quit England. ^{Arrestment}

By the 18 and 19 Vic., cap. 67, which came into operation on 24th October, 1855, the privilege of summary diligence may now be followed on the bill or note. After the expiration of twelve days from the service of the writ of summons, which must be obtained within six months from the time that the instrument shall have become due and payable, the plaintiff may proceed to judgment and execution unless leave to defend the action be meanwhile obtained. By sec. 2 of the Act leave to appear is granted only on the defendant paying the amount of the claim into Court, or upon satisfactory affidavits disclosing a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts and on such terms as to security or otherwise as to the judge may seem fit. Sec. 3 provides that, after judgment, the Court or a judge may, under special circumstances, set aside the judgment, and stay or set aside execution, and give leave to appear and to defend the action if it shall appear reasonable to do so, and on such terms as to the Court or judge may seem just. ^{Summary Diligence.}

By sec. 4 the Court or judge is at liberty to order the bill or note to be deposited with an officer of the Court, and to stop proceedings until the plaintiff shall have given security for the costs thereof. By sec. 5 a remedy is given

Rights of Action.

Statute of Limitations.

Modification of—by Recent Enactments.

for the expenses of noting, and sec. 6 enables the holder to issue one writ of summons against all or any number of the parties to the bill or note.

STATUTE OF LIMITATIONS.—The period within which an action must be brought on the note or bill is six years. By English law there are various limitations of actions, all of which may be said to have been introduced by statute, and the effect of which has proved most salutary in necessitating a timely exercise of right, and in affording protection and security in the enjoyment of property. The statutes of limitations more particularly affecting bills and notes are the 21 James I, cap. 16, and the 9 George IV, cap. 14, the latter, introduced by Lord Tenterden, having been passed to remedy the uncertainty that existed under the former Act with regard to the effect which acknowledgments or promises had in determining the limitation. And in several particulars these statutes have been modified by the 19 and 20 Vic., cap. 97. By 9 Geo. IV, cap. 14, it is enacted, sec. 1, that no acknowledgment or promise by words only shall take a case out of the statute, unless in writing and signed by the party chargeable, and that where there are two or more joint contractors or executors, one shall not lose the benefit of the statute in consequence of a written and signed acknowledgment or promise by the others, but that the acknowledging or promising parties only shall be chargeable, and then follows a provision that the effect of *payment* of principal or interest by any person shall remain as before the statute. And by sec. 3 it is enacted that no indorsement on the note or bill of any payment by the party to whom such payment shall be made shall be deemed sufficient proof of payment to take the case out of the statute. By sec. 8 any memorandum or writing made necessary by the Act is exempted from stamp duty.

With reference to payment, therefore, it was held that if part payment of the principal or interest were made by any

person having authority to pay, and whether on a joint or a joint and several bill or note, this had the effect of taking the case out of the statute, as against all joint parties living and *sui juris* at the time such payment was made. But the 19 and 20 Vic., cap. 97, enacts, sec. 14, that "when there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only, or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor or administrator, shall lose the benefit of the said enactments or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money, by any other or others of such co-contractors or co-debtors, executors or administrators."

Statute of
Limitations.
Modification
of—by Recer-
Enactments.

The cases under the statute of limitations, James I, have been exceedingly numerous, and the decisions very conflicting; and the subsequent enactments were framed with the view of removing the doubts and uncertainty which prevailed. Though not preventing litigation, the grounds for it have been considerably narrowed, and the recent cases as to whether a debt has been taken out of the statute or not, have proceeded chiefly upon the terms and sufficiency of the acknowledgments given and the payments made. Thus, in the case of *Bourdin v. Greenwood*, 22nd Nov.—9th Dec., 1871, where the Rev. W. H. Langley gave, on 6th January, 1846, his promissory note at three months after date in favour of "D. B. or S. B., his wife," and twenty years afterwards, D. B. being then dead, Mr. Langley indorsed the note thus: "W. H. Langley, 1866," and the date of the note was apparently altered from 1846 to 1866, it was held that, under the circumstances, this indorsement was a sufficient acknowledgment under Lord Tenterden's Act to take the debt out of the statute.*

Acknowledg-
ments.

* Vice-Chancellor Wickins, in delivering judgment, said: "If Mr. Langley had prefixed 'due,' or any similar word, the matter would have been too clear for argument, since the paper itself identified the debt; and the question is,

Statute of
Limitations.
Payments.

In *Morgan v. Rowlands* and another, 7th May, 1872, the Court of Queen's Bench, recognizing the principle established in *Davis v. Edwards*, 7 Ex., 22, and previous cases, that part payment of a debt does not take it out of the operation of the statute James I, *unless it is made under such circumstances that a promise to pay the remainder may be reasonably inferred from it*, held that a promise to pay the debt could not be inferred from a payment of interest *made by legal compulsion*, and that the debt was not taken out of the operation of the Statute of Limitations. In *Davis v. Edwards*, Court of Exchequer, 4th Nov., 1851, supra, which was an action brought on a joint promissory note made by the defendant and another person afterwards insolvent, it was held that a dividend paid within six years from the insolvent's estate did not revive the debt, either as against the insolvent or his joint contractor, because it could not be said that the payment of a dividend by the assignee of an insolvent, on account of a debt inserted in the schedule, was an admission that the debt was still due and owing, seeing that the whole proceedings were based on the express understanding that on payment of a certain sum the insolvent should be free from further suit by his creditor in respect of the debt in his schedule. Moreover, such payment was not made by the assignee as the agent

whether the want of the word makes any difference. I think on principle that it does not, and that it would be too narrow a construction of Lord Tenterden's Act to say that there is here no acknowledgment made or contained in a writing signed by the party chargeable. It is true that there is here no writing except the signature and the date, but if they together involve an acknowledgment, as I think they do, the want of any other writing can hardly be fatal. The alteration of the date in the note itself is pleaded by the plaintiff as done by Mr. Langley at the time of the indorsement. There is no proof that it was so, though the thing seems not improbable. It was urged that that alteration disclosed an intention to make a new promissory note and not to acknowledge an existing one, and that the case is one not of old note and acknowledgment but of new note bad for want of a stamp. Considering that the original signature is not cancelled, that the note is still left as an alternative promise to pay to two persons, one of whom was dead, and that the new signature is written on the back of and across the note, I think it the better conclusion that it was not really intended to make a new note in the strict sense of the word, but simply to acknowledge an existing one."

of the insolvent, but as the officer of the Court selected by the law to distribute the estate of the insolvent among his creditors. To take a case out of the statute, the payment must be made confessedly on account of a larger sum, thereby acknowledged to be still due, and impliedly promised to be paid.

In Chasemore and another *v.* Turner, 14th June, 1875, Ex. Ch., from Q. B. L. R., 10 Q. B., 500; 45 L. J. Q. B., 66; 33 L. T., 323; 24 W. R., 70, which was an action on a note made in 1865, the plaintiffs contended that the following letter, written to them by the defendant, one of the makers of the note in 1867, took the case out of the statute: "The old account between us, which has been standing over so long, has not escaped our memory. As soon as we can get our affairs settled we will see you paid. Perhaps, in the meantime you will let your clerk send me an account of how it stands," it was held by Barons Cleasby, Pollock, and Amphlett, and Justices Grove and Denman, the Chief Justice, Lord Coleridge, dissenting, that this was an unconditional promise to pay, and sufficient to take the case out of the statute.

Of the principle to be adopted in the construction of documents like the above, Baron Amphlett said, in delivering his judgment: "The principle I take to be this. First of all, there must be an absolute acknowledgment—an unconditional acknowledgment of the debt. If that stands alone, and nothing is said about payment, that acknowledgment will imply a promise at law to pay the debt. But if you find that there is not only an acknowledgment but also a promise to pay the debt, we then have to look whether the promise is an unqualified, unconditional promise, or whether it is subject to a condition; and if it is a conditional promise to pay, and the condition is not performed, then the mere acknowledgment of a debt will not take the case out of the statute. That is the principle laid down by Mr. Baron Parke in the case of

Statute of
Limitations.
Payments.

Promise.

Statute of
Limitations.
Promise.

Smith *v.* Thorne, 18 Q. B., 134, which has been recognized by several other judges as good law. In order to take the case out of the operation of the statute, there must either be an absolute acknowledgment of the debt, with nothing said about payment, or a promise to pay upon demand, or a promise to pay upon some event which has happened, and is proved to have happened. So that if a promise to pay is this, 'If I have money to pay I will pay,' it seems to me perfectly clear that the promise is conditional, and that the plaintiff who relies upon the promise must prove that the condition has been fulfilled, and that the ability to pay has arisen. Otherwise a great injustice might be done to the debtor who wishes to be honest, but at the same time does not wish to promise that which he is not able to perform. If he says merely, 'I promise to pay you (as in Tanner *v.* Smart, 6 B. and C., 603) as soon as I am able,' I think it necessarily follows that the plaintiff must show that the defendant is able to pay before he can rely upon the promise. So in the case of Smith *v.* Thorne, where the words relied upon merely expressed a hope to be able to pay. I look to the judgment in Smith *v.* Thorne merely for the principle; the actual facts in that case were very different from those now before us, for an expression of a hope to be able to pay is not really a promise at all, for the hope may never be realised."

And Baron Pollock observed, in the course of his judgment, "I do entirely agree, and I think we all do, with what was said in the case of Tanner *v.* Smart, which was the first case which made it thoroughly understood that the effect of a promise to take the case out of the Statute of Limitations was not merely to revive the old debt but to create a new cause of action. I also entirely agree with what was said by Vice-Chancellor Wigram in Phillips *v.* Phillips, 3 Hare, 281, that the result of that doctrine is that the new promise and not the old debt is the measure of the creditor's right."

It may be observed, with reference to the first portion of the terms of the enactment, sec. 1 of 9 Geo. IV, cap. 14, ante 294, that previous to this statute, as stated by Chief Justice Jervis in his book of Rules, not only a verbal promise to pay a debt more than six years old, but a bare unconditional acknowledgment of its subsistence made within six years before action brought had been held sufficient to take the case out of the statute.

And previous to the Act of George, markings or indorsements of payments made on the bill or note by the holder were evidence to take the debt out of the statute. By sec. 3, as has been seen, these are now insufficient for the purpose, and in a payment therefore of interest, or part payment of principal, the creditor or holder should get the debtor to indorse the payment, and attach his signature.

By the statute of James an action must be commenced and sued within six years after the cause of action accrues to the party. On a bill or note payable after date the statute, therefore, begins to operate from the time the instrument falls due, and not from its date. In the case of a bill payable after sight, as there is no right of action until presentment, without such presentment the statute does not begin to run. With a note payable a certain time after sight the statute runs from the expiration of that time after presentment to the maker.

When the instrument is payable on demand and is issued at its date, the statute runs from the date and not from the time of demand. Norton *v.* Ellam, 2 M. and W., 461, though with regard to a note on demand, restrictively domiciled, as a demand at the place is essential it might, perhaps, be a question whether, in this instance, the statute does not run from the time of such demand. If payable a certain time after demand the effect is the same as when payable after sight. Thorpe *v.* Booth, R. and M., 388.

Statute of
Limitations.
Promise.

Indorsements
of Payments.

When Statute
begins to
Operate.
After Date.

After Sight.

On Demand.

After Demand.

Statute of
Limitations.
After Demand.

In the case of a promissory note dated 20th May, 1857, payable "three months after demand," and containing indorsements of interest, the last of which was on 1st May, 1858, it was held that the payment of interest is of itself evidence of a demand for payment of the note, Jessel, M. R., observing that interest is a payment made for forbearance of exaction of money due, and that from the time which had elapsed with reference to this note payment of the instrument must be presumed. Equity barred a bond debt after twenty years. And it was added: "We wish to guard against such a doctrine as that the mere production of an unpaid note twenty years after its date should enable demand of payment to be made. It comes most emphatically under the head of stale demands." *In re Rutherford, Brown v. Rutherford*, Court of Appeal, from Chan. Div., 25th May, 1880.

After Notice.

In *Clayton v. Gosling*, 5 B. and C., 360, where a note was payable "twelve months after notice," it was held the statute did not operate till after notice and the twelve months subsequent.

On
Contingency.

In a case where the note was not to be delivered to the payee until certain events had happened, it was held the statute did not operate from the date, but from the delivery of the note. *Savage v. Aldren*, 2 Starkie, 232.

Non-accept-
ance and
Non-payment.

Administra-
tion.

Banker.

Where a bill is dishonoured by non-acceptance, and afterwards by non-payment, the statute runs from the refusal to accept. *Whitehead v. Walker*, 9 M. and W., 506.

In an action on a bill by an administrator who had not taken out administration till after the instrument was due, it was held that the statute ran not from the maturity of the bill, but from the taking out of administration, for there can be no action till there is a party capable of suing. *Murray v. East India Company*, 5 B. and Ald., 212.

In the case of a banking account on which there had been no operations for six years, it was held that a customer's claim after the expiry of this period was barred

by the statute. *Foley v. Hill*, 1 Phil., 399, in which Lord Chancellor Lyndhurst reversed the decree made by Vice-Chancellor Bruce against the bankers. In *Pott v. Clegg*, 16 L. J., Ex., 210, where the same point arose, and it was held that the statute applied, the Chief Baron in concurring expressed, however, a doubt in these terms: "At the same time I must with considerable doubt and diffidence express my own opinion whether there is not a special contract between the banker and his customer relative to the money deposited, or whether the money is to be considered as money lent. I think that is a question for the jury, who ought to decide what is the liability of the banker, and whether the money deposited with him is money lent or not. I could not concur in the judgment of the rest of the Court without expressing this doubt, in which, however, they do not concur, as they are of opinion that money in the hands of a banker is money lent, with the superadded obligation, that it is to be paid when called for."

Under the statute of James, if any person entitled to action shall at the time the cause of action accrues be an infant, feme covert, or non compos mentis, then such person may bring the action within six years after the disability ceases.

When a disability is removed, and the statute once begins to run, no supervening disability will stop it. Byles and Authorities, 9 ed., 336.*

Infant.
Married
Woman.
Lunatic.

Disability

* As to how the operation of the statute may be obviated by issuing a writ, Byles says, 13th ed., 349: "According to the old practice, the plaintiff might issue a writ, and without serving it on the defendant, keep it in his pocket, and get it returned at any time within the six years, then file it (for it must have been filed), and enter continuances, at any time, down to the writ on which the appearance was, and, by replying the writ with the continuances, obviate the effect of the statute. But this practice was abolished by the Uniformity of Process Act, 2 Wm. IV, cap. 39, sec. 10. By that Act, no first writ affects the operation of the statute, unless the defendant has been arrested or served with it, or proceedings to outlawry have been had upon it, or unless the writ and every continuing writ has been returned non est inventus, and entered of record within one calendar month from its expiration; and each succeeding writ must issue within a month of the expiration of the preceding, and contain a memorandum specifying the date of the first writ. The return

Statute of
Limitations.
Separate
Estate.

With regard to a claim upon the separate estate of a married woman, the old doctrine of a charge upon separate estate constituting a creditor pro tanto a cestui que trust does not now appear to be wholly followed by the Courts, which seem inclined, in consonance with wider and sounder views, to regard the creditor as a simple contract creditor only, whose claim against the separate estate may consequently be barred by the Statute of Limitations. Formerly it was held that all separate estate was a trust for the payment of debts; and that, as a trust is not within the Statute of Limitations, the claim of a creditor upon such an estate was not barred by the statute.

Equity.

Of the proceedings under the statute, it may be added that though the Act does not in terms apply to equitable demands, Courts of Equity adopt its provisions as a rule. "In the case of a legal demand," said the Lord Chancellor, in *Foley v. Hill*, supra, "the plea of the Statute of Limitations is the plea which is made use of in this Court, and considered in this Court as coming under the Statute of Limitations, in obedience to that statute. And I think the doctrine upon this subject is most clearly and satisfactorily stated by Lord Redesdale, in the case of *Hovendon v. Lord Annesley*. He says: 'I think it is a mistake in point of language to say, that Courts of Equity act merely by analogy to the statute; they act in obedience to it.' And again: 'I think, therefore, Courts of Equity are bound to yield obedience to the Statute of Limitations upon all legal titles and legal demands, and cannot act contrary to the spirit of its provisions.' I think the statute must be taken virtually to include Courts of Equity, for

of bailable process was to be made by the sheriff: of non-bailable, by the plaintiff or his attorney. By the 15 and 16 Vic., cap. 76, secs. 11, 12, the writ was to be renewed every six months, and the original writ marked with a seal bearing the date of renewal; but by Ord. viii. r. 1, a writ is to be in force for twelve months, and a renewed writ for six months from date of renewal. A bill in equity, filed by one creditor on behalf of himself and the other creditors, will prevent the statute of limitations from running against any of the creditors who come in under the decree."

when the Legislature by statute limited the proceedings at law in certain cases, and provided no express limitations for proceedings in equity, it must be taken to have contemplated that equity followed the law, and therefore it must be taken to have virtually enacted in the same cases a limitation for Courts of Equity also."

BILLS, ACCOMMODATION.—Bills and notes, besides being founded on real transactions, may be granted without value, or without being based upon a real obligation or debt, and when such is the case they are known as accommodation bills, or, in the language of traffickers, as "wind bills" or "kites."

The accommodation bill in its widest sense may be said to have two marked aspects, viz., when resorted to in a case of temporary necessity, as where a trader has to meet demands during the depression of his particular branch of trade, when the immediate sale of his commodities would be attended with loss; and, on the other hand, when the instrument is wilfully put in circulation as founded upon a real transaction, when in truth it is had recourse to for the purpose of entering into some hazardous or speculative enterprise, or of propping up some bankrupt concern, or directly cheating and defrauding the public.

In the first instance, or where temporary necessity is the motive for the accommodation, the circulation or discount of the instrument may perhaps not be altogether objectionable, but even in this instance the banker, before discounting, should be thoroughly satisfied of the actual solidity of the applicant and the temporary nature of his difficulty, taking, at the same time, care that a due limit be put to the renewal of such applications.

With regard to the instrument in its other capacity, this sometimes puts to the test the nicest penetration and judgment of the banker, notwithstanding the general rules which he has to guide him in discovering the true origin and character of the instrument. And unfortunately events

Statute of
Limitations.
Equity.

Different
kinds

Temporary
Necessity.

Spurious or
Fraudulent.

Accommodation Bills.
Spurious.

have too painfully demonstrated, not only the general prevalence of this species of the accommodation bill, but in one or two notorious instances the implication of members of his own order in the origin and extension of its circulation. The effects, however, which have followed the iniquitous system of credit pursued may probably serve, not only as a check to that peculiar abuse of the accommodation system which has been witnessed, but also act as an incentive to the exercise of greater vigilance on the part of the banking profession at large in their operations with the trader, and in their reception of the instruments that may be presented to them, and it would be well if the circumstances which have occurred were to lead to a general co-operation amongst the body for the purpose of watching the issue of anything in the shape of spurious or fictitious paper, and of rooting out and destroying all organized attempts at its circulation ; for to their efforts rather than to the interference, as has in some quarters been proposed, of the Legislature might a successful and effectual remedy be looked for to the evil in question. Meanwhile, to those of the profession who are influenced by a due sense of the responsibility of their office it will, perhaps, be hardly necessary to hint with how watchful an eye, as we have already had occasion to remark, they should regard any undue expansion of the liabilities of a constituent, and how they should accept the fact of any marked irregularity in his course of business, as by the sudden and undue multiplicity and diversified nature of his bills, or by his giving and taking longer credits than usual, as one demanding the most rigid scrutiny, for these are almost never-failing symptoms of a resort to the accommodation system in its worst feature. As illustrative of the length to which this system has been carried by certain trading houses, we gather from a bankruptcy court case that a bankrupt, described as a "sewed muslin warehouseman," had given to one trading firm alone fictitious acceptances

to the amount of upwards of £12,000, and that from another trading firm he had received, in the space of two years, £600 or £700 as "commission," at the rate of one per cent. for acceptances to the firm, the process in this instance being varied by his obtaining acceptances for the same house from other persons, chiefly smaller traffickers, shopkeepers, and their shopmen, who on their part received a "commission," varying from a half to one per cent.*

Accommodation Bills.
Spurious.

But from this practice a descent under the system to the next step, that of forgery, was easy, and, from revelations in other cases, it appears that, after an indulgence in the way above described, a shorter and more convenient method was adopted by simply filling in the acceptance of a fictitious person, and forging, occasionally, one or two indorsements, and the number of bills of this description thrown into circulation through the laxity of certain banks in the north of England had reached a most discreditable extent, and was attended with the most pernicious consequences.†

* The following may illustrate the mode by which the manufacture of accommodation paper was carried on in Glasgow, a manufacture which, as has been remarked, seemed for a short period to have outrivalled that of its cotton, or any of its other staples. A handloom weaver, who had been thrown out of employment by the stagnation of trade, was met by a friend in better circumstances, who accosted him with the good tidings of "Weel, mon, I think I can gie ye a hint whaur ye'll get a wab noo." To his surprise, however, the party addressed declined the kindly-meant offer with, "Oo na, I'm obleeged to ye, nae doot, but I'm no heedin' for ony mair wabs. I'm in the discoontin' line noo, and that pays far better, an' its far easier wark." He was earning, it appeared, his £3 or £4 a week by indorsing his name on the acceptances of a firm that shortly afterwards found its way into the Gazette.

† The fraud and corruption which have so long and so widely tainted the commercial dealings of this country, and brought such a stigma upon the reputation of the "British merchant," led, in one instance, to an organization of swindling which, for boldness and ingenuity in its inception and execution, has been, perhaps, almost without a parallel in the commercial history of any country. The formation—see v. 19, Bank. Mag., 510—of three or four commercial firms in London was undertaken: one adopting a name resembling that of a leading partner in a bank, the second imitating the name of a foreign house of repute, while the third and fourth establishments endeavoured to import into their constitution an apparent similarity to connections with the manufacturing and warehousing departments. These individuals, then acting in concert, published circulars and trade reports in English, French, and German, with the view of giving to their proceedings an appearance of intelligence and business promptitude. Employing travellers

Accommodation Bills.
Antidote.

To a wider dissemination of the true principles of banking, however, and to a greater uniformity in banking practice, with the lopping from the body of the few rotten branches that are still left, and the thorough severance

on the continent, the firms purchased goods subject to reference; and foreign houses being referred to such apparently respectable names in London, were sometimes duped into granting credits or taking acceptances, which, when the period arrived for payment, were never satisfied. The swindlers were evidently men of commercial education, the knowledge of merchandise and markets they displayed indicating that they were well versed in the branches of business with which they were supposed to have associated themselves. A description of one of the operations of the gang, practising between Belgium, Newcastle, and London, is thus given : "The agent of one of the pretended firms concluded a contract with a house in Antwerp for the shipment of merchandise, giving references ; these were considered satisfactory, and the shipment was made. The Antwerp firm, however, was cautious enough, before sending the bills of lading, to apply to a highly-respectable firm here for additional information, and received in answer the intelligence that the parties were 'in bad repute.' Thereupon the buyer was informed that the bills of lading would not be forwarded unless remittances for the full amount were made. A dignified and strong correspondence followed, but at length the Antwerp house secured a remittance of £1,700 on Paris. The bill purported to be accepted by a well-known banking house there, and bore the indorsement of six or seven apparently respectable firms. So carefully was the document prepared, that an elonge was attached to afford room for additional indorsements. The bill possessed, in order, the stamps and detail of each firm, and indorsement stamps to match, and appeared altogether so regular and bona fide that suspicions were lulled and the bills of lading were forwarded. A few days, however, only elapsed before a clerk of the Antwerp house discovered a mistake in one of the indorsement stamps of a French bank, and, upon inquiry, the bill, with all its accessories, proved to be an impudent forgery. The Antwerp firm, it is stated, were sufficiently fortunate to attach the cargo of merchandise on its arrival at Newcastle, and thus stop further loss ; but, although this was the case, the whole affair had been so well managed that no prosecution could be established against the delinquents." About this time, too, and it is to be hoped the practice has been confined to the period, London firms of reputed character and eminence dealt, as stated in Chambers' Edinburgh Journal, knowingly and systematically in forged bills. "Great money dealers, whose name alone can sometimes turn the current of the market, have," it was asserted, "a quiet drawer in which they stow away these bills, just as they would do any other. The principle upon which they proceed is a very simple one. They know their customer ; he is a man in business, with a stock in trade, a character to lose, and greatly in want of ready money. This customer forges to his bills the name, usually of a near relation, or some one of moneyed fame with whom he is connected. The dealers, fully aware of the circumstance, take the bills. They know well that their customer will pay this bill before any others—that he will run all risks, refuse all payments, make all sacrifices, rather than leave these bills unpaid, with the terrible consequences of their examination. The customer, in fact, says to the dealer : 'I put my liberty, my character, and prospects in your hand ; if I fail in my engagements, you will have the power to transport me as a felon. I shall not run that risk ; I have such and such property—such and such connections—lend me so much money.' The dealers do not hesitate to comply."

And, of the ordinary bill swindle, we have the following details from a leading journal : "The first step is to find out the parties who are to be victimised. This is done in various ways. An advertisement appears in the

from all personal interest, direct or indirect, in mercantile or trading matters of its chief administrators, we can only look, as insuring the best safeguard against a recurrence of disasters arising from this and every other species of Accommodation Bills. Antidote.

papers, more especially respectable class papers, addressed to 'clergymen,' or 'military gentlemen,' or 'tradesmen in want of temporary assistance,' informing them that the advertiser has a large amount of trust-money in his hands, which he is bound to employ profitably, and that he is willing to make advances on personal security, provided the party is highly respectable, and that parties requiring pecuniary accommodation may obtain any amount they require by addressing a note to Mr. A. B., at, etc. This is one kind of bait. A more successful one is, to address a circular to a large number of traders in any of the country towns, intimating that if, at any time, they should possibly require an advance of money, they may be immediately accommodated by applying to the said Mr. A. B., at, etc. This is the surest way to obtain victims. The party addressed is astonished to find that his necessities have become known to Mr. A. B., but he is so grateful for the kind offer made to him that he at once puts himself in communication with that gentleman, and requests an advance of £100 on his acceptance. When the swindler obtains such an application from any of those he addresses, either by advertisement or by circular, the first stage of his operations is complete, and, unless some unforeseen difficulty presents itself, the victims are, in fact, secured. Mr. A. B. writes back by the next post, informing his correspondent that he will be happy to make the advance required on receiving, by return of post, his acceptance at, say, three months' date, and that the cash will be remitted by a bank-post bill, or by a banker's draft, whichever may be preferred. Sometimes, instead of writing, Mr. A. B. waits on the gentleman in want of money, and, relying on the simplicity of his victim in matters of business, gets from him his signature across a stamp, or takes away the bills which are to be discounted, with the promise of returning with the cash as soon as the 'necessary preliminaries' can be arranged. The parties who thus give away their acceptances hear no more of Mr. A. B. That gentleman becomes defunct. They receive no money from him, nor can they find out his address. A. B. is non est inventus; and, if the victims think it is desirable to endeavour to obtain back their signatures, all they can do is to advertise that they have been robbed of them, and caution the public against discounting the bills to which they may be attached. In this state matters remain until the bills reach maturity, when the acceptors receive a notice from Mr. Israel, a solicitor of sharp practice, that he holds the acceptances; that he has only just seen the caution against taking them—if any has been published; that he, of course, gave full value for them, as he can prove in a court of law, if necessary; and suggesting that it will save further heavy expenses to pay the amounts when they become due. This enables the victims to understand their position. If they pay the bills, or fifty per cent. to get them back, the business is concluded, to the satisfaction of A. B. If, on the contrary, they determine to resist the demand, Mr. Israel commences proceedings, retains a leading counsel, puts witnesses in the box at the trial, who swear that they saw him give money for the acceptances 'to some foreign gentleman who was just going abroad,' and Mr. Israel's cheque book is produced, to show the exact sum he paid. The jury are left by the judge to decide according to the evidence—such evidence being, *if true*, quite conclusive against the unfortunate victims of Mr. A. B.; and Mr. Israel, therefore, probably gets a verdict. In addition to the amount of the bills, he thus obtains a pretty considerable sum in the shape of costs. If the victims are so fortunate as to obtain a verdict in their favour, they only have to pay their attorney's extra costs, which cannot be recovered from Mr. Israel, and, as these are heavy, it becomes a matter of serious consideration

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accommodation or undue credit, and, with a proper and more diffused extension of support to those engaged in legitimate trade and honest and laborious industry, there would doubtlessly be afforded a powerful antidote, not only to grosser acts of corruption and dishonesty, but to that growing violation of moral principle which, under the guise of superior shrewdness, is at present threatening to sap the foundations of almost every branch of mercantile enterprise. In fact, the banking body, occupying a distinct and well-marked position, should prove what might be termed an embodied moral force, necessitating, on the part of the trader, a stricter adherence to those precepts, not the less simple that they are divine, to do to others as we would they should do to us, to be neither slothful in business nor in haste to be rich, to exercise justice and probity—rules which, for nothing more than the acquisition of mere temporal happiness and prosperity, or the material improvement and advancement of a people, would be difficult to be surpassed, we apprehend, by all the teachings of the philosopher or dogmas of the political economist.

Position of Obligants at Law.

But we shall now proceed to consider how the situation of parties under the accommodation bill is regarded at law, and to point out the differences which in certain instances exist between this instrument and the real bill. The accommodation bill, then, may be briefly defined as a bill granted gratuitously, or without value or consideration, for the purpose of the person accommodated raising money

whether it would not have been better at the outset to have given Mr. Israel ten shillings in the pound on the amount of the bills, instead of defending the action.” One swindler of this class estimated his receipts at about £30,000 during a period of sixteen years. During some of these years his gains were comparatively inconsiderable—a result of the efforts made by some of his victims to bring him to justice.

To complete the catalogue of villainies in connection with the bill, there is reported at present a large and increasing number of persons in London who offer to get bills discounted on favourable terms, and, on the instruments being entrusted to them, they can and do retain them for their own purposes, successfully defying those whom they have overreached.

upon it or otherwise using it, he, however, making provision for it when at maturity.*

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Should the accommodator be afterwards sued upon the instrument, it will be a sufficient answer to the action that the plaintiff gave no value for the instrument, though in a question with an innocent indorsee for value the accommodator cannot resist payment, and it would be no defence in such case that the indorsee or plaintiff knew at the time he took the bill that the accommodator or defendant had received no value, because the very object of granting such bills is to raise money by discounting them with third parties. And, as we have seen, in a case where bankers received bills from a depositor in security of account, and were aware that these bills had been accepted for his accommodation, and the balance of the account was in favour of the depositor at the time the bills fell due and afterwards, so that the lien ceased to attach, yet it was held that if the bills were not withdrawn, and the balance turned afterwards against the depositor, the bankers' lien would again revive, so as to entitle them to recover against the accommodation acceptor. *Atwood v. Crowdie*, ante 201.

Accommodator.

Formerly, on being sued, the accommodator could, by shewing the bill to be an accommodation bill, call on the plaintiff to prove the consideration which he gave for the bill; but now the former is not entitled to do so, it being necessary on his part to allege in his plea and to prove, not only that it was an accommodation bill, but that the plaintiff and those through whom he deduces his title gave

Proving consideration.

* "A party who procures another to lend his acceptance thereby engages either himself to take up the bill or else within a reasonable time before the bill becomes due to provide the accommodation acceptor with funds for so doing, or lastly, to indemnify the accommodation acceptor against the consequences of non-payment. *Reynolds v. Doyle*, 1 M. and G., 753; 2 Scott, N. R., 45 S. C. And therefore, where the drawer of an accommodation bill, a week before the bill became due, handed over bank notes to the accommodation acceptor, it was held that he could not himself revoke this payment, and that his bankruptcy before the bill became due did not amount to a revocation. *Yates v. Hoppe*, 19 L. J., 180, C. P. Had the payment been a fraudulent preferment it would, of course, have been otherwise." *Byles*, 6th ed., 100.

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no consideration for the instrument. On this point Lord Abinger has said: "There is a substantial distinction between bills given for accommodation only and cases of fraud, inasmuch as in the former case it is to be presumed that money has been obtained upon the bill. If a man comes into court without any suspicion of fraud, but only as the holder of an accommodation bill, it may fairly be presumed that he is a holder for value. The proof of its being an accommodation bill is no evidence of the want of consideration in the holder. If the defendant says: 'I lent my name to the drawer for the purpose of his raising money upon the bill,' the probability is that money was obtained upon the bill. Unless, therefore, the bill be connected with some fraud, and a suspicion of fraud be raised from its being shown that something has been done with it of an illegal nature, as that it has been clandestinely taken away, or has been lost or stolen (in which cases the holder must shew that he gave value for it), the onus probandi is cast upon the defendant." *Mills v. Barber*, 1 Mees. and W., 425, supported by sundry other cases.

Where a total failure of consideration can be insisted on as a defence, the defendant may also plead partial failure as an answer pro tanto. Thus, it appearing in an action against the acceptor of a bill for £19 12s. that he had value for £10 only, the residue being to accommodate the plaintiff, it was held by Lord Ellenborough that, although as to third persons the bill might be for £19 12s., yet as between the plaintiff and defendant the acceptance was for £10 only, and this sum having been paid before the action, his lordship nonsuited the plaintiff. *Darnell v. Williams*, 2 Stark., 166.

Release.

By several cases it has been held contrary to earlier doctrine that an accommodation acceptor is not discharged by the holder releasing, or compromising with, the drawer. In *Kerrison v. Cooke*, 3 Camp., 362, Mr. Justice Gibbs remarked, after referring to a decision by Lord Ellenborough,

who had ruled that a holder, knowing the bill to be accepted for the drawer's accommodation, lost his claim against the acceptor by giving time to the drawer, because the acceptor was a mere surety, and consequently discharged by indulgence shewn to the principal, "I am sorry that the term 'accommodation bill' ever found its way into the law, or that parties were allowed to get rid of the obligations they profess to contract by putting their names to negotiable securities." And in *Fentum v. Pocock*, 5 *Taunt.*, 192, Lord Mansfield, concurring in the view of Mr. Justice Gibbs, that no distinction should exist between an acceptor for value and an accommodation acceptor, observed that "he who accepts a bill, whether for value or to serve a friend, makes himself in all events liable as the acceptor, and nothing can discharge him but payment or a release." And the same Judge, in a previous case, *Ragget v. Axmore*, 4 *Taunt.*, 730, stated that, "excepting in the case in *Campbell (Laxton v. Peat*, decided by Lord Ellenborough), it never was known that anything passing between other parties could discharge an acceptor." And see Mr. Justice Parke, who, in *Price v. Edmunds*, 10 *B. and C.*, 578, characterised as "good sense and good law" the decision of the Court of Common Pleas in *Fentum v. Pocock* supra, which first fully overruled the former doctrine. And in subsequent and other decisions at law the judgment in *Fentum v. Pocock* has been upheld. But the doctrine laid down in it has *in equity* been doubted, and as to the right of an accommodation acceptor to set up his relation as a surety in equity, or by way of equitable plea, see Lord Chancellor Cottenham, in *Hollier v. Eyre*, 9 *Cl. and Fin.*, 45. See also the views expressed by the later judges in *Ewin v. Lancaster*, 29th May, 1865, Court of Queen's Bench, in which case, however, the indorsee had entered into an agreement with the drawer that for a mortgage on real property he would give up the bills to be cancelled, and release all parties from liability upon

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them, and the mortgage being executed, the indorsee knowing at the time that the bills were accepted for the accommodation of the drawer without consideration, it was held that the acceptor was discharged from liability on the bills, and could plead the facts by way of equitable defence to an action by the indorsee against him. It is quite clear, as was observed by Justice Crompton, that a creditor is not bound to sue either the principal or surety, but the moment he puts himself in the position that he cannot sue, or makes any agreement by which he or the surety is prevented from suing the principal debtor, he discharges the liability of the surety. In this case the indorsee had tied up his hands, and prevented himself from suing the principal debtor.

Recourse.

Besides the accommodating party having a defence in the instances mentioned, another important distinction in connection with the accommodation bill is that the ordinary rules as to due negotiation do not fully apply to the instrument. Thus, indulgence shewn to an acceptor does not discharge the drawer for whose accommodation the bill was accepted, and notice of dishonour to the drawer is unnecessary, as, being himself the real debtor, he acquires no right of action against the acceptor by paying the bill, nor can he in such a case plead any other failure in diligence by the holder, such as that a foreign bill has not been protested.*

Notice of Dishonour.

When the accommodation, however, happens to be on behalf of an acceptor or indorsee, and not on behalf of the drawer, the latter is entitled to notice. Thus, in *ex parte Heath*, 2 Vesey and Beames, 240, 2 Rose, 141, Bayley, 297, upon application by the indorsee of a bill to be allowed to prove against the drawer, it was urged as an excuse for not giving notice of dishonour to the drawer, that he had

* It is suggested, however, that protest is expedient, when the question of recourse is to be judged of by foreign courts, as they might not be governed by the exceptions allowed in our courts. Lord Ellenborough, in *Legge v. Thorpe*, 12 East, 177; 4 Par. 225.

no effects in the acceptor's hands, and was therefore not entitled to notice. It was answered that there were various transactions between the drawer and acceptor, and that the result of these was accommodation to the acceptor; and, per Lord Eldon, "if a bill were accepted for the accommodation of the drawer, and there were nothing but that bill between them, notice would not be necessary, the drawer being, as between him and the acceptor, first liable; but if bills were drawn for the accommodation of the acceptor, the transaction being for his benefit, there must be notice without effects; and if, in the result of various dealings, the surplus of accommodation is on his side, he is, with regard to the drawer, in the situation of an acceptor having effects; and the failure to give notice may be equally detrimental." He accordingly directed an inquiry, but noticed that upon the complication which existed in the case, it was upon the petitioner, the indorsee, to prove there was not what the law calls "effects." In *Corey v. Scott*, 3 B. and Ald., 619, Bayl., 297, action by indorsee against drawer on bill drawn by defendant on Gordon, and accepted by him payable to defendant, indorsed by him to Lough, and by Lough to plaintiff. No evidence of notice to defendant; excuse, that defendant had no effects in Gordon's hands. Answer, that Lough was to provide for the payment, and that both Gordon and defendant, Scott, lent their names to accommodate him. Abbott, C. J., thought this rebutted the excuse from want of effects, and nonsuit. On rule nisi to enter verdict for plaintiff and cause shewn, the Court were clear defendant was entitled to notice, for had he taken up the bill he might certainly have sued Lough, if not Gordon. He was therefore in a situation in which want of notice might have hurt him, and, if so, he was entitled to notice. And so in a bill made for the accommodation of a posterior or remote indorsee, notice of dishonour is requisite to the drawer and prior indorsers accommodating, in order that they may

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secure their recourse upon such indorsee. See *Brown v. Maffey*, 15 East, 216, where a bill was drawn accepted and indorsed by several indorsers for the accommodation of the last indorser. The defendant, one of the prior indorsers, was not aware that any name was lent except his own. Upon dishonour of the bill no notice was sent to the defendant. Mr. Justice Bayley thought the notice necessary; because, if the defendant had paid the bill, he would (even if he had no remedy upon the bill) have been entitled at least to have sued the last indorser, and therefore nonsuited the plaintiff. A rule nisi was granted to set aside the nonsuit, but on cause shewn the Court thought it clear that the defendant was entitled to notice.

In the case of a payee of a note indorsing for the accommodation of the maker, it was held in *De Berdt v. Atkinson*, 2 H. Bl., 336, where delay in presentment and notice had taken place, that he was not entitled to notice of dishonour. Here, however, the decision appears to have proceeded upon erroneous principles, as the maker in such a case is from the first the real debtor on the instrument, and becomes so to the payee when the latter is obliged to pay. To secure his right of relief, therefore, the payee, though, as in the above instance, originally aware of the maker's insolvency, would seem clearly entitled to due notice. Accordingly, the above decision has been overruled by the later cases of *Nicholson v. Gouthit*, 2 H. Bl., 609; *Smith v. Beckett*, 19 East, 187; and *Maltass v. Siddle*, 6 C. B., 494, 28 L. J., 258. But should the payee accommodating take effects from the maker to answer the note, he will not be entitled to notice, as he is then himself the proper party to pay the instrument. *Corney v. Mendez da Costa*, 1 Esp., 303.

Where the drawer makes a bill payable at his own house, it has been held that presumptive evidence is thus afforded that it was drawn for his accommodation, and *prima facie* dispenses with proof of notice of dishonour

to him. "I cannot understand," says Lord Tenterden, "why the drawer should, with his own hand, make the bill payable at his own house, unless he was to provide payment of it when at maturity." Sharp *v.* Bailey, ante page 112.

When obliged to pay the bill, the accommodation acceptor may sue the drawer on his implied contract to indemnify him, but not on the bill itself. Young *v.* Hockley, 3 Wils., 346. And, for all the expenses of the action instituted against him, the accommodation acceptor has a claim upon the drawer. Ex parte Marshall, 1 Atk., 262; Stratton *v.* Mathews, 18 L. J., 5 Exch., and other cases. But costs are not recoverable by the accommodator if the action were indefensible, as where it was instituted against him at the instance of a bona fide holder. Roach *v.* Thompson, Mood. and M., 487; Beech *v.* Jones, 5 C. B. Rep., 696.

An accommodation acceptor who pays the creditor is, in equity, entitled to all instruments and securities given by the principal debtor. Dowbiggin *v.* Bourne, Younge's Rep., Ex. 115; Gray *v.* Seckham, re Getyneg Llantwit Colliery Co. Ld., 41 L. J., Ch. 281; 26 L. T., 233; 20 W. R., 920.*

With regard to the application of the statute of limitations, it has been held that the statute begins to run from the time at which the plaintiff is prejudiced by actual payment. Reynolds *v.* Doyle, 1 M. and Gr., 753.

* It is sometimes the practice for an accommodation acceptor to take from the drawer a written indemnity, and on this point Chitty says, 10th ed., 214: "It is very advisable for the acceptor of such bills to take a written engagement from the drawer, not only to pay to him the amount of the bills before they become due, but also to indemnify him against the principal sum and interest, as well as any costs or expenses which he may necessarily, or with the sanction of the party accommodated, incur at law or in equity in respect thereto, together with interest, on all such sums and costs as he may be obliged to pay or may so incur. Where there is a risk of the party accommodated becoming bankrupt, some have thought it advisable also to take a counter bill or note, so as to enable the acceptor to prove against the drawer's estate; but it is the practice in bankruptcy to allow the accommodation acceptor, in the absence of any such counter bill, to prove for the amount on the implied contract of indemnity."

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It appears to be now clearly established, the authorities having been formerly conflicting on the point, that an indorsee for value, having an accommodation acceptance transferred to him after the term of payment, and having at the time notice of the original absence of consideration, may nevertheless maintain an action upon the instrument against the acceptor, unless there were an agreement, express or implied, restraining the negotiation of the instrument after it should become due. *Sturtevant v. Ford*, 4 M. and G., 101; *Lazarus v. Cowie*, 3 Q. B. Rep., 459, supporting *Charles v. Marsden*, 1 *Taunt.*, 224; and see *Stein v. Iglesias*, 1 C. M. and R., 565.

Bankers.

Where bankers discount a bill for the drawer, a constituent, and are informed by him, on its dishonour, that it was accepted for his accommodation, and they agree at his request not to apply to the acceptor, but to look to him only for the payment, and afterwards his account shows a credit balance exceeding the amount of the bill, the latter will be considered as thereby satisfied, so that they cannot afterwards sue the acceptor, though the drawer should fail and be much indebted to them in consequence of subsequent advances. In this case, the drawer, in his evidence, said: "I told him (one of the plaintiffs, the bankers) that the bill was an accommodation from defendant to me, that I should take it up, and requested him not to apply to defendant. He said very well, and requested me to take it up as soon as I could. He did not like defendant's bills, and had had trouble enough with him. I said he might depend upon me. He said he should look to me, and not mind him." Per Abbott, J., to plaintiff's counsel: "Unless you can alter the fact of the conversation, it is an answer to the action. The banking account of the drawer with the plaintiffs having at one time, after the bill was due, been in his favour to a larger amount than the bill, the plaintiffs were bound to apply the balance in discharge of that bill, and could not keep it as a security for a

fluctuating balance which might ultimately become due to them." Marsh *v.* Houlditch, as reported in Chitty, 8th ed., n. c. 437. Accommodation Bills.

In cases of bankruptcy, if the holder of a bill or note can compel a person to pay it, he may generally, in the event of such person becoming bankrupt, prove the amount, and, whatever would be a defence to an action at law or a suit in equity, will exclude the holder from such proof; and, by sec. 31 of the Bankruptcy Act, 1869, generally all debts and liabilities, present or future, certain or contingent, are now deemed to be debts provable in bankruptcy. A bona fide holder of an accommodation bill may prove for the full amount of such instrument upon the estate of each of the parties to it, and receive dividends to the extent of the amount due to him. Ex parte Lee, 1 P. Wms., 782; ex parte King, Cooke's B. L. 156, and other cases.

On adjudication, all the estate and effects of the bankrupt pass to the registrar, provisionally, till the appointment of a trustee, when it passes to and vests in the latter. But as, in general, property in which the bankrupt has no *beneficial interest* does not pass to his trustee, it has been decided that he may, after an act of bankruptcy, indorse a bill accepted for his accommodation, so as to convey to his indorsee a right of action against the accommodation acceptor. Arden *v.* Watkins, and Wallace *v.* Hardacre, ante page 196.

In cases of mutual accommodation, and particularly where both parties have become bankrupt, considerable difficulty and embarrassment have been occasioned to the Courts with regard to proof, and the mode of adjusting the accounts between the bankrupt estates. Mutual accommodation may be either with or without a specific exchange of securities. In the former case, or where a bill of exchange or promissory note is given in exchange for another bill or note, the consideration is held valid, and the doctrine of

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suretiship does not apply, as each acceptor of the bill or maker of the note, in such case, engages to pay his own acceptance or note. *Rolfe v. Caslon*, 2 H. and Bl., 570; *Cowley v. Dunlop*, 7 T. R., 565; *Buckler v. Buttivant*, 3 East, 73. The original doctrine in this country with regard to all cross bills was that each bill constituted an absolute debt from the time of granting it, and that, therefore, each party could prove the bill he held against the other's estate before taking up his own. *Ex parte Maydwell, Cooke*, 180; *ex parte Bloxham*, 8 Ves., 531. Afterwards the Court of Chancery determined that, although proof might be made by the holder, he could not receive the dividends until he had retired his own instrument. And in one case, *ex parte Lord Clanricarde, Cooke*, B. L. 160, Lord Thurlow, though he admitted the proof and retained the dividend, yet he afterwards, it is said, expressed a doubt to Lord Eldon, then Attorney-General, whether he had not gone too far in permitting Lord Clanricarde to prove. 4 *Taunt.*, 205. See *ex parte Bloxham*, supra, and *Sarratt v. Austin*, 4 *Taunt.*, 204. Now, before the holder can prove, it is incumbent upon him to pay his own acceptance or note, or exonerate the bankrupt's estate from the original debt. To constitute a specific exchange, it is not indispensable that the acceptances exchanged should be the acceptances of either party, nor that the one acceptance should exactly correspond with the other in the amount or date of maturity, any difference in these respects being evidence upon the question whether the parties did or did not transfer the bills in consideration of each other. *Ex parte Lord Clanricarde*, and *Buckler v. Buttivant*, supra.

In cases of mutual accommodation *without a specific exchange*, or where each party, without such an exchange, lodges bills with the other for his behoof, and which are entered in their respective accounts, it is held, where one of the parties circulates the bills given him while the other

retains his, that the latter cannot have relief upon the retained bills but must claim as surety upon the other bills, Accommodation Bills. the respective sets of instruments in such cases of accommodation not being viewed as considerations for each other, each party being considered as merely surety on those bills which he has given away, and therefore only entitled to claim in that capacity. Thus, where there had been a mutual bankruptcy, and one party had negotiated bills to a considerably larger amount than the other, the latter was not allowed to rank against the other's estate upon the bills he had not negotiated, even to the effect of covering the loss incurred by his estate in receiving much less accommodation than it gave, his claim being held as only one of suretiship; and moreover, that for this claim he could not rank on the other's estate unless he had satisfied the whole of the bills which he had given to the other, as the holders of these bills had already ranked upon them against both estates, and it was impossible that both principal and surety should rank at one time. *Ex parte Walker*, 4 Ves., 373. And in such case the balance provable as between the two bankrupt estates can only be struck on account of the cash or good bills given. And thus, where a petition was presented by the assignees of a bankrupt for the purpose of proving both for the cash balance between the two bankrupts' estates and in respect of dishonoured bills upon an issue of cross paper dishonoured on both sides, part of which having been negotiated was proved by the holders against both estates, Lord Ellenborough said: "Upon consideration of the case *ex parte Walker*, it struck me that there were but two ways of taking it as between the two estates, either to consider all the bills as struck out of the case entirely as issued for a bad purpose, like gambling transactions, etc., upon which there could be no proof, or to consider them all as good bills. I do not see that there is a middle course." The order was pronounced that the petitioners Proof of, in Bankruptcy.

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should be at liberty to prove the cash balance only. *Ex parte Earle*, 5 Ves., 833.*

In the later case of *ex parte Read*, 1 G. and J., 224, Bayl., 436, it was held that the bills negotiated by the creditor on the cash account represented the cash balance, or so much thereof as they equalled in amount; and that after proof of the bills the cash balance represented by such bills could not be proved, for if it were there would be double proof.

"The latest case upon this intricate subject," says Byles, 9th ed., 442, "is *ex parte la Foreste*, 2 D. and C., 199; 1 M. and B., 363, S. C., in which there was a cash balance between two bankrupt houses, and an account of mutual accommodation bills dishonoured. And the cash balance alone was admitted to be proved. And it was said that Lord Eldon's dissatisfaction to *ex parte Walker*, applied only in case there was a surplus of the estates; in which

* It may be noted that, in the case of *ex parte Rawson*, 1 Jacob, 274, the following remarks fell from Lord Eldon: "I think that I argued the case of *ex parte Walker*, and I must say that the speculations about paper certainly outran the grasp of the wits of the Courts of Justice. This sort of circulating medium puzzled as able a man as ever sat here—Lord Thurlow. I remember the first case of it. It was then small in amount, one bill and another. He then considered the acceptance of the one as a consideration for the other, and allowed both to prove; but then there was this difficulty, that it lessened the fund for paying the holder of the bill, and thus, by proving, they prejudiced their own creditors. It was found this would not do; and then it was said, 'If you will prove, you must first take up your acceptance,' which got rid of the objection of the party proving in competition with his own creditor. Then came the case of those houses at Liverpool and Manchester, drawing on one another to the amount of £50,000. What was to be done, then? The Court were puzzled and distressed. At last, however, we came to a sort of anchorage in that case, *ex parte Walker*. I have no difficulty in saying that I never understood it. I am satisfied that, though no doubt the Court understood that judgment, yet none of the counsel did. The decision was this: that, where there are cross bills drawn for accommodation, they are all to be thrown out of the account on both sides, and it is to be taken as if it were a cash balance only. If this were upon the principle that applies to one or two bills, that they are not to be proved by one estate against the other till all the creditors of both are paid, I could understand it. If there be £1000 of acceptances on the one side, and £10,000 on the other, Lord Loughborough says that they are not to be regarded at all; that it is all chance how the two estates may pay. I say not; and if there be a surplus of one estate to satisfy the other, why should it not be implied? Look at the case of partnership. A partner cannot prove against the estate of his co-partner, so as to affect the creditors of both, but he may be paid his demand out of the surplus, if there is any. I do not see why the same rule is not to be applied here. I cannot bring myself to think that the case of *ex parte Walker* is right, if there is a surplus."

case, as between two partners after payment of the common creditors of both, the equities of the houses should be adjusted out of the surplus estate. This decision was appealed from, but on account of the small amount of the estate the appeal was not prosecuted, and the cases seem still very confused. Perhaps the result is, that when the bills remain in the hands of the bankrupts, the cash balance is the debt, but when they have been negotiated the doctrine in *ex parte Read* applies." See now, however, the Bankruptcy Act, 1869, which enacts, sec. 31, that demands in the nature of unliquidated damages, arising otherwise than by reason of a contract or promise, shall not be provable in bankruptcy, and no person having notice of any act of bankruptcy available for adjudication against the bankrupt shall prove for any debt or liability contracted by the bankrupt subsequent to the date of his so having notice. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the bankruptcy by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in bankruptcy, and may be proved in the prescribed manner before the trustee in the bankruptcy.

BILLS, IRREGULAR.—Although bills irregular in form and illegal in consideration may now be said to be comparatively rarely met with in ordinary banking practice, still it will not be incompatible with our present design to take some notice of these, as, while extending the knowledge of the young banker, they will in some degree serve as a useful illustration of our subject.

Of irregular instruments, the following were adjudged as amounting to promissory notes, first in the case of *Chadwick v. Allen*, 2 Stra., 706:—

Irregular Bills.

"I do acknowledge that Sir Andrew Chadwick has delivered me all the bonds and notes, for which £400 were paid him on account of Colonel Synge, and that Sir Andrew delivered me Major Graham's receipt and bill on me for £10, which £10 and £15 5s. balance, due to Sir Andrew, I am still indebted, and do promise to pay."

And in the case of *Wheatley v. Williams*, 1 M. and W., 533:—

"Gentlemen,—I have received the imperfect books, which, together with the costs overpaid on the settlement of your account, amounts to £80 7s., which sum I will pay you within two years from this date.

"I am, Gentlemen,

"Your obedient servant,

"THOMAS WILLIAMS."

And in *Ellis v. Mason*, 7 Dowl., 598:—

"John Mason, 14th February, 1836, borrowed of Mary Ann Mason, his sister, the sum of £14 in cash, a loan in promise of payment, of which I am truly thankful for."

And in *Casborne v. Dutton*, Selwyn's, N. P., 5th ed., 378:—

"I do acknowledge myself to be indebted to A. in £50, to be paid on demand for value received,"

the Court in this case holding that the words "to be paid" amounted to a promise to pay, and observing that the same words in a lease would amount to a covenant to pay rent.*

* In Chitty, 8th ed., 150, there is cited the case of *Ruff v. Webb*, 1 Esp., 129, in which an instrument in these words, "Mr. N. will much oblige Mr. W. by paying to T. R., or order, twenty guineas on his account," was held by Lord Kenyon as a bill of exchange, it being considered an order to pay; but in *Little v. Slackford, Mood and M.*, 171, same author, where the instrument

But the following instrument was held as an agreement and not a promissory note :—

Irregular Bills.

“ Nottingham, August 5, 1844. Borrowed of Mr. J. W. the sum of £200, to account for on behalf of the Alliance Club, at months' notice, if required.”—White *v.* North, 3 M. H. and G., Exch. Rep.

And in another case on the same day the same was held with reference to a similar instrument expressed at “two” months' notice.

And in Jarvis *v.* Wilkins, 7 M. and W., 410, the following was held as a guarantee and not a note :—

“ 11th September, 1839. I undertake to pay to Mr. Robert Jarvis the sum of £6 4s. for a suit of clothes ordered by Daniel Page,”

the Court observing that the expression “ordered” shewed that the consideration was executory.

And in Moffat *v.* Edwards, 1 Car. and M., 16, where the instrument was in this form :—

“ I, R. J. M., owe Mrs. E. the sum of £6, which is to be paid by instalments, for rent. Signed, R. J. M.,”

it was held not to be a note, as no time was stipulated for payment of the instalments.

In Clarke *v.* Perceval, 2 B. and Ad., 660, where Clarke having given his daughter Mary, on her marriage, the stock of a public-house, amounting in value to £1200, she and her husband had signed the following :—

was thus : “ Mr. L., please to let the bearer have seven pounds, and place it to my account, and you will oblige your humble servant, R. S.,” it was held by Lord Tenterden as no bill, upon the ground that it did not import to be a demand by a person having a right to call on the other to pay, but was only a request of payment as a matter of favour. With reference to this, however, it is remarked that civility in the terms of request cannot alter the legal effect of the instrument ; “ il vous plaira payer ” is in France the proper language of a bill. Pailliet Man. de Droit Franc., 841.”

Irregular Bills.

“4th March, 1824.

“£1200.

“On demand we promise to pay to Mr. George Clarke, or order, twelve hundred pounds, for value received in stock, ale, brewing vessels, etc., this being intended to stand against me, the undersigned, Mary Perceval, as a set-off for the sum left me in my father's will above my sister Ann's share.

“THOMAS PERCEVAL.

“MARY PERCEVAL.

“William Hall, witness.”

But the Court of King's Bench held that the £1200 was not payable at all events, and that the instrument was, consequently, not a promissory note conferring upon the father a right of action, but was merely a memorandum of a sum received as satisfaction pro tanto of an intended legacy.

And instruments in the following shape:—

“Received certain bills to get discounted or return on demand.”—“Received a bill of exchange to recover the value for you, or to make such other arrangements for your benefit as may appear to me reasonable and proper.”—“Mr. H. has advanced me £12 on furniture delivered to him at Stratford.”—“Mr. T. has left in my hands £200.”—“Mr. M. has this day left with me £10 on account of the debt, interest, and costs in this action,”

were held as neither promissory notes, nor receipts, nor agreements, but as mere acknowledgments, requiring no stamp, and inoperative, with, perhaps, the exception of affording evidence of a debt. *Mullett v. Hutchinson*, 3 C. and P., 92; *Langdon v. Wilson*, 2 Man. and Ry., 10; *Huxley v. O'Connor*, 1 C. and P., 204; *Tomkins v. Ashby*,

6 B. and C., 541; and *Levy v. Alexander*, 19 L. J. Ex., 113, in which case the Court said, that although the £10 was "left" on account, it was not "received" or "accepted," and could have been returned. Irregular Bills.

But, last of all, there is one instrument which may, in a measure, claim for itself a distinct and independent classification, viz., the

I O U.

This instrument, the form of which consists merely of these three letters, signifying I owe you, followed by the amount, and duly signed (and in effect binding as a promissory note payable on demand), was, in *Fisher v. Leslie*, 1 Esp., 426, held by Lord Kenyon to be neither a promissory note nor a receipt, and, therefore, admissible in evidence without a stamp. In this case the document signed by the defendant was in these words: "I O U eight guineas." See also *Childers v. Boulnois*, 1 Dow. and Ry. N. P., 8; and *Israel v. Israel*, 1 Camp., 499, all contrary to the doctrine of Lord Eldon, who, in *Guy v. Harris*, Chitty, 8th ed., 558, ruled that such a note could not be received in evidence of a set-off if unstamped, it being in reality a promissory note, though not negotiable.

The I O U should be regularly dated and addressed to the creditor, though, if not addressed to anyone, it will be evidence of a debt for the plaintiff if produced by him. *Fisher v. Leslie*, supra; *Curtis v. Richards*, 1 Man. and G., 46; *Fesenmayer v. Adcock*, 16 M. and W., 449, L. T., 30th Jan., 1849, in which last case the following discussion took place as to the nature of the instrument. The action, it may be premised, was brought for work and labour, money lent, and on an account stated. An I O U having been put in as evidence of money lent and an account stated,

Baron Rolfe directed that it was no evidence.

Watson contended that an I O U was evidence of money lent, and cited *Douglas v. Holme*, 12 Ad. and Ellis.

Parke, B.: "It is no evidence of money, but it might be for goods sold and delivered."

Watson then contended that it was also evidence of an account stated. *Curtis v. Richards, supra.*

Pollock, C. B.: "The Court is with you on that point; it is evidence of an account stated."

Alderson, B.: "The I O U is not evidence of money lent; and this ought particularly to be reported, to correct the error in *Adolphus and Ellis, 12, Douglas v. Holme.*"*

Upon an instrument in the following form a stamp was held necessary: "11th October, 1831. I O U £20, to be paid on the 22nd inst." *Brookes v. Elkins, 2 M. and W., 74.* But the following were held as mere I O U's, upon which no stamp was required: "1839, Nov. 11. I O U £45 13s., which I borrowed of Mrs. Melanotte, and to pay her five per cent. till paid." *Melanotte v. Teasdale, 19th June, 1844, 13 M. and W., 216.* And, "I O Mr. J. G. the sum of £200 for value received." *Gould v. Coombs, 14 L. J. C. P., 175.* In the former of these cases it was contended that the instrument did not require a stamp either as a promissory note or an agreement. "It is not a promissory note because it contains no words from which the Court can extract an express promise to repay the principal money at a certain time. *Horne v. Redfearn, 4 Bing. N. C., 433; 6 Scott, 260; Moffatt v. Edwards, 1 C. and Mar., 16.* The express promise here is only to pay five per cent. interest until the principal is paid; and if that

* In an action (*Phillips v. Broome, 8th December, 1853*) brought to recover £9 due by the defendant for board at the plaintiff's house in Brighton, it appeared that the defendant, who had left without paying, upon being afterwards met with, had acknowledged that he owed the money, and had given the plaintiff what the latter thought was an I O U, but the letters written were I O Y. The counsel for the plaintiff suggested that the defendant, being probably acquainted with some of the technicalities of the law, thought the Y would be an effectual bar to the recovery of the money by law; but as it was merely evidence of a debt having been acknowledged, the insertion of the wrong letter was of no consequence. The case was not defended, and the jury found for the plaintiff. In Scotland the validity of an I O U as a voucher for debt has been held, although the instrument be in the handwriting of another than the party whose signature it bears.

amounts to an agreement, yet it does not appear that the matter of it is of the value of £20. In *Brookes v. Elkins* (*supra*), where a stamp was held necessary, there was an express promise to pay the £20, the subject matter of the I O U, on a given day, which was of the value of £20. The case must be brought clearly within the prohibition of the Stamp Act. Here, on the face of this instrument, the promise to pay interest does not necessarily appear to be of any value; the debtor might pay the principal immediately, and then no interest would become payable." And it was laid down by Pollock, C. B., that "the doctrine that an I O U simply does not require a stamp has been so long established, and so many instruments have been drawn on the faith of it, that it must be considered settled law. It is a doctrine older than the last Stamp Act; and as that Act does not notice it, we may infer that the Legislature did not mean the Act to apply to such documents. If, then, this paper had simply been 'I O U £45,' it would not require a stamp. Nor would it if it had been, 'I O U £45 which I borrowed of Mrs. Melanotte,' because that carries it no further than a mere acknowledgment. Then what, if anything, is the agreement contained in it? Only 'to pay five per cent. till paid,' which is, in fact, mere surplusage. The only agreement, therefore, of which the paper is evidence is an agreement to pay £5 per cent. interest on £45, which is not necessarily of the value of £20. It is not enough that the agreement should be possibly of that value; it must be so in its nature and inception. No stamp, therefore, was necessary in this case, and the rule must be discharged."*

The giving of an I O U does not preclude the grantor from shewing there was no consideration. *Hinton v. Sparkes*, 3 L. R. C. P., 161.

* An agreement under £20 did not require a stamp, but now the exemption is confined to "agreement or memorandum the matter whereof is not of the value of £5." 32 and 33 Vic, cap. 97, sec. 35.

I O U.

It has been decided that a bill in equity will lie to discover whether an I O U were given for a gaming debt. Wilkinson *v.* L'Eaugier, 2 Y. and Col., 366. And equity will restrain an action on an I O U given for an illegal consideration. Quarrier *v.* Colston, 12 L. J. Ch., 57.

BILLS, ILLEGAL.—Of illegal considerations or contracts, these may be illegal either at common law or by statute. At common law, all obligations are illegal when granted as an incentive to crime, or for purposes *contra bonos mores*; and contracts for defrauding creditors, for dropping a criminal prosecution, suppressing evidence, compromising felony, or procuring pardon for a criminal, or for other purposes, disturbing or obstructing the course of justice, are illegal at common law, as also contracts made with an alien enemy, contracts against the policy of the domestic relations, as in restraint of marriage or in procurement of marriage, contracts in *general* restraint of trade, as not to carry on a particular kind of trade in any part of England,* contracts tending to the injury of the revenue by evading or violating the custom and excise laws,† contracts for the amount of wagers inconsistent with public policy or prejudicial to the feelings or interests of a third person, and contracts, generally, that are repugnant to the revealed law of God, or the general policy of the common law.

By Statute. By statute, contracts for the sale of offices connected with the household of the sovereign or with the administration of justice, and, in general, all public and government offices, are declared void, as they are, indeed, for the most part, at common law. And amongst the considerations and contracts generally which have been declared illegal by

* If the restraint be limited, however, not to trade in a particular place, or within a certain distance of a particular place, or if the restraint be not to deal with certain customers, the contract will be held good. Hunlock *v.* Blacklowe, 2 Saund. 156, n. 1; Ward *v.* Byrne, 5 M. and W., 548, and other cases.

† A contract, however, has been held good in the case of a trader selling with the mere knowledge of the buyer's intention to make an illegal use of the purchase, but without lending him aid in effecting the unlawful purpose. Hodgson *v.* Temple, 5 Taunt., 181.

Illegal Bills.
At Common
Law.

statute are usury,* gaming,† stock-jobbing,‡ wagering policies on ships or lives, inducing the signing of a bankrupt's certificate, securities by which a creditor of a bankrupt who has proved his debt is to receive more than the rest, and others of less general importance.

Illegal Bills.
By Statute.

* No contract, however, can now be objected to on this ground, the usury laws having been entirely abolished throughout the United Kingdom by the 17 and 18 Vic., cap. 90.

† Money lent to play at any illegal game cannot be recovered by the lender. *Cannan v. Bryce*, 3 B. and Ald., 179. And "this principle," observes Lord Abinger, in *M'Kinnell v. Robinson*, 3 Mees, and W., 434, "was not for the first time laid down in *Cannan v. Bryce*, but by that case fully settled that the repayment of money lent for the express purpose of accomplishing an illegal object cannot be enforced."

‡ The statutes against stock-jobbing, 7 Geo. II, cap. 8, made perpetual by 10 Geo. II, cap. 8, are both repealed by the 23 and 24 Vic., cap. 28, though it is questioned whether some cases of gaming in stock may not have been within 9 Anne, cap. 14, and be not now within 8 and 9 Vic., cap. 109. Byles, 9th ed., 136. In stock-jobbing, it has been explained, "neither buyer nor seller have any stock, but the buyer agrees nominally to buy of the seller stock, say £1000, on a certain day. When that day arrives, if the stock is at a lower price than when the bargain was made, the buyer pays the seller as much per cent. on the £1000 as the stock has fallen; but, if the stock has risen, the seller pays the buyer in a similar way. The sums so paid are called differences. In fact, a time bargain is a mere wager, the seller betting that the stock will fall, and the buyer that it will rise." 1 Carr. Rep., 13.

The Courts have decided that transactions in foreign stock did not come within the provisions of the statute of George, nor did jobbing in railway shares. By the statute, money paid under a jobbing contract was made recoverable, and both parties were subjected to a penalty of £500 unless the money paid was refunded. And it was declared that payment of money, instead of delivering or receiving stock, subjected to a penalty of £100; and that contracts to buy or sell stock of which the seller was not at the time possessed, subjected both parties to a penalty of £500. But, on this latter point, see the decision in *Mortimer v. M'Callan*, infra. And it may be added that, notwithstanding the prohibition and the penalties seen, stock-jobbing or speculative dealing by time bargains in the public funds was of daily occurrence.

With regard to bills, the following cases occurred under the statute. The defendant had accepted a bill drawn upon him by his broker for differences paid on his account by the latter. The bill was transferred by the broker to the plaintiff, and it was held that the bill was void as between the broker and the defendant, and that the plaintiff, having had notice of the illegal consideration, stood in the same situation as the broker. *Steers v. Lashley*, 6 T. R., 61. And, where a broker had taken his principal's acceptance for differences in omnium, and indorsed it when overdue, it was held that jobbing in omnium was within the Act, that the bill was void in the hands of the broker, and that, having been indorsed when overdue, it was also void in the hands of the indorsee as against the acceptor. *Brown v. Turner*, 7 T. R., 630; 2 Esp., 631 S. C. Where stock, however, was sold, of which the seller was not in possession at the time, but he afterwards bought and transferred it to the vendee, he might, notwithstanding the statute, maintain an action for the price. *Mortimer v. M'Callan*, 7 M. and W., 20; affirmed 9 M. and W., 636.

Of the term "omnium," we may add, this is merely used to denote the aggregate of the distinct funds or items of which a loan may be composed. Thus, in 1798, Government contracted a loan of 17 millions, and for every £100 the subscribers received as follows:—

Illegal Bills.
As between
Primary
Obligants.

Innocent
Indorsee.

Bills formerly
void now
deemed as
given for
illegal
consideration.

When the consideration is thus illegal, or when, as in the case of accommodation bills, no value has been received, it is competent, in a question between the acceptor and drawer of a bill, or between the maker and payee of a promissory note, for the acceptor or maker to plead non-liability. And in several instances the instrument, in the hands even of a bona fide or innocent indorsee, is, as against either of these parties, declared nugatory, the relative statutes having expressly avoided and rendered of none effect the contract, as in the case of securities given upon bargains for the sale of an office, 5 and 6 Ed. VI, cap. 16, 49 Geo. III, cap. 126, 53 Geo. III, cap. 129; gaming or wagering policies on ships or lives, 19 Geo. II, cap. 37, 14 Geo. III, cap. 48; a stipulation with a sheriff for ease or favour, 23 Hen. VI, cap. 9; securities given by a bankrupt to a creditor to enable him to receive more than his proper dividend, 6 Geo. IV, cap. 16, sec. 8; and securities given by a man for a debt from which he has been discharged under the Insolvent Debtors Acts.

In the instances undermentioned, however, it has been enacted by the 5 and 6 William IV, cap. 41 (preserved in force by the 8 and 9 Vic., cap. 109, sec. 15), that whereas securities and instruments made void by virtue of the following Acts "are sometimes indorsed, transferred, assigned, or conveyed to purchasers or other persons for a valuable consideration, without notice of the original

£150 Three per Cent. Consols, at the current market price, £48½	£72 15 0
£50 Three per Cent. Reduced Annuities, at £47½....	23 15 0
4/11 Long Annuities; taken at 13 years' purchase.....	3 3 11
	—
Discount.....	£99 13 11 2 11 7
	—
	£102 5 6

By the denomination "scrip," the different items are known until the full amount of the loan, which is generally payable by several instalments, is paid over to the Government, when the terms scrip and omnium cease, the various items sinking into the capital of the funds in the names by which they were known.

consideration for which such securities or instruments were given, and the avoidance of such securities or instruments in the hands of such purchasers or other persons is often attended with great hardship and injustice, for remedy thereof be it enacted," etc., "that so much of the herein-before recited Acts of the 16 Charles II, 10 William III [each intituled 'an Act against deceitful, disorderly, and excessive gaming'], 9, 11, and 12 Anne [each of the two former 'an Act for the better preventing of excessive and deceitful gaming,' and the last 'an Act to reduce the rate of interest without any prejudice to Parliamentary securities'], 5 Geo. II ['an Act for reducing the interest of money to 6 per cent.'], 11 and 12 Geo. III ['an Act to prevent frauds committed by bankrupts'], 45 Geo. III ['an Act relative to contracts made and securities given for the ransom of captured ships or cargoes'], and 6 Geo. IV ['an Act to amend the laws relating to bankrupts'], as enacts that any note, bill, or mortgage shall be *absolutely void*, shall be, and the same is hereby repealed; but, nevertheless, every note, bill, or mortgage which, if this Act had not been passed, would, by virtue of the said several lastly hereinbefore mentioned Acts, or any of them, *have been absolutely void*, shall be deemed and taken to have been made, drawn, accepted, given, or executed for an *illegal consideration*, and the said several Acts shall have the same force and effect which they would respectively have had if, instead of enacting that any such note, bill, or mortgage should be *absolutely void*, such Acts had respectively provided that every such note, bill, or mortgage should be deemed and taken to have been made, drawn, accepted, given, or executed for an *illegal consideration*; provided always that nothing herein contained shall prejudice or affect any note, bill, or mortgage which would have been good and valid if this Act had not been passed."

And, with regard to the remedy granted to losers at play who have given and paid negotiable instruments, it

Recovery by
Losers at play.

Illegal Bills.
Bills formerly
void now
deemed as
given for
illegal
consideration.

Illegal Bills.
Recovery by
Losers at play.

is enacted, by sec. 2, "that, in case any person shall, after the passing of this Act, make, draw, give, or execute any note, bill, or mortgage for any consideration, on account of which the same is, by the hereinbefore recited Acts of the 16 Charles II, 10 William III, and the 9 and 11 Anne, or by any one or more of such Acts, declared to be void, and such person shall actually pay to any indorsee holder, or assignee, of such note, bill, or mortgage the amount of the money thereby secured, or any part thereof, such money so paid shall be deemed and taken to have been paid for and on account of the person to whom such note, bill, or mortgage was originally given upon such illegal consideration as aforesaid, and shall be deemed and taken to be a debt due and owing from such last-named person to the person who shall so have paid such money, and shall accordingly be recoverable by action at law in any of His Majesty's Courts of Record."

Recovery by
Holder for
value.

Though, previous to this statute, a bona fide holder could not sue the acceptor or maker in the instances alluded to, yet he was at liberty to sue his immediate indorser on the instrument, or for the original debt or consideration which passed between them, a subject to which further allusion shall be presently made. Now, however, unless he obtained the bill or note after maturity, illegality of consideration cannot, it is conceived, under the Act, be sustained as a defence in an action at the instance of an onerous holder.

Mala fides.

In a case of mala fides, or where the consideration or contract on a bill or note is fraudulent, the instrument will be unavailing in the hands of a party guilty or aware of the fraud. Thus, if a bill be taken by the seller for goods sold under a false and fraudulent warranty, he cannot recover upon the instrument; but, in insisting on fraud as a defence, the defendant must repudiate the contract, and retain no benefit under it. *Lewis v. Cosgrave*, 2 *Taunt.*, 2. Thus, in the above instance, the goods received should be immediately returned by him on the discovery of the fraud.

And should a bill be given by an insolvent to one of his creditors by way of better security, or for a larger sum than is given to the creditors generally, in order that he may be induced to execute the deed of composition, the bill will be held void as a fraud upon the other creditors. *Cockshott v. Bennett*, 2 T. R., 763, and other cases. And, being given with a fraudulent intention, such a bill would have been void, though the composition had never been effected. *Wells v. Girling*, 1 B. and B., 447.* And a compounding creditor cannot, without apprising the other creditors, compound for part of his debt, and afterwards sue for the residue. *Britten v. Hughes*, 5 Bing., 460. If the composition deed contain a clause for the surrender of securities, and the compounding creditor holds bills drawn by the debtor, and afterwards recovers their amount from other obligants, he must refund the money to the insolvent, though it would be otherwise if the composition deed contained no such clause. *Stock v. Mawson*, 1 B. and P., 286; *Thomas v. Courtnay*, 1 B. and Ald., 1.

An innocent indorsee or holder not privy to a fraudulent contract, may recover upon the bill or note against the acceptor or maker who has been defrauded. *Morris v. Lee, Bayl.*, 500. And an indorsee having had notice of a fraudulent or an illegal consideration at the time he took the instrument, may recover if he can deduce title from a prior party who has not had such notice. *Masters v. Ibbserson*, 18 L. J., 348 C. P.

Should part of the consideration of a bill or note be fraudulent or illegal the whole instrument is vitiated, and where a bill given upon an illegal consideration in whole or in part is renewed, the renewed bill is also void unless the amount be diminished by the exclusion of what formed

* In one case, it has been held that a bill affording a better security is valid if given after the execution of a composition deed. *Feise v. Randall*, 6 T. R., 146. But this case does not seem to be authoritative. *Leicester v. Rose*, 4 East, 372.

Illegal Bills.
In fraud of
third parties.

Liability of
defrauded
party.

Part illegality.

Illegal Bills.

the illegal part of the consideration on the original bill. *Scott v. Gilmore*, 3 *Taunt.*, 226; *Chapman v. Black*, 2 *B. and Ald.*, 588; *Hubner v. Richardson*, 1819, *Bayl.*, 516.

Onus probandi.

If a bill be originally infected with fraud or illegality, the holder, in suing, must prove that he or some other obligant under whom he claims has given value. *Hogg v. Skene*, 34 *L. J. C. P.*, 155, and other cases.*

* Upon the general question of the onus probandi, Lord Blackburn, in expressing his judgment in the case of *Jones v. Gordon*, House of Lords, 25-26 June, 1877, said : "I should be very sorry to say anything which would cast a doubt on the principle that a bill of exchange, or other similar negotiable instrument, is negotiable to the fullest extent of its kind. In a mercantile country, their negotiability is of very great value, and I take it to be clear that when (as in this case) a bill of exchange is, on the face of it, a good bill, and there is nothing to show the contrary, it *prima facie* is a good bill, and imports value, and it is necessary to show the contrary. Moreover, even if a bill in its inception was not a good bill of exchange, and was originally obtained by fraud, yet a person who has taken it *bona fide*, and for value, is entitled to sue upon it if the parties are solvent, and to prove upon it in a case of bankruptcy, notwithstanding an infirmity or vice in the title of some of the parties to it, if the knowledge of that vice is not brought home to him when he took it. But I think it also clear, both upon the authorities and upon good sense, that, when a bill of exchange is proved to be a fraudulent one, or an illegal one, or a stolen one, it being known that the holder was a party to the fraud, illegality, or theft (and, therefore, unable to sue upon it himself), the presumption is so strong that he would part with it to somebody who could sue for him, that the burden of proof is shifted, and then, instead of the bill being *prima facie* good, as it would otherwise be, the person suing has upon him the onus of proving that he gave value. I should be unwilling to say precisely whether it shifts the onus upon him to show that he gave value *bona fide*, so that, though he gave value, he must show affirmatively that he was doing it honestly, or whether the onus of proving that he is dishonest, or had notice of things which were dishonest, remains upon the other side, while he is bound to prove value. Lord Wensleydale's language, in *May v. Chapman*, would seem to show that the onus as to both is shifted, but I do not think that has ever been decided, nor need it be decided in the present case. I have no doubt that, in proving value, it may be shown that, though the holder gave value, he took the bill under circumstances which preclude him from suing upon it. I think, however, it is now settled that, if value is given for a bill, it is not enough to show that there was carelessness, negligence, or foolishness in not suspecting that the bill was wrong, when there were circumstances which might have led to such a suspicion. All these are matters which tend to show that there was dishonesty in not doing it, but they do not in themselves furnish a defence to an action on a bill of exchange. I take it that it is necessary to show, whether in the case of a party who is solvent and *sui juris*, or as against the estate of a bankrupt, that the person who gave value (whether great or small) for the bill was affected with notice that there was something wrong about it when he took it, but he need not have had notice of what the particular wrong was. If a man, knowing that a bill was in the hands of a person who had no right to it, should think that, perhaps, the holder had stolen it, when in truth the latter had obtained it by means of false pretences, I think he would be taking it at his peril. But such evidence of carelessness or blindness might, with other evidence, be good evidence upon the question, which appears to me to be the real one, whether he knew that there was something wrong in the bill. If he was (so to speak) honestly blundering and careless, he would not be disentitled to recover ; but if it appeared that he must have had a suspicion of something

BILLS AS PAYMENT.—With regard to the effect which a bill has upon the debt or consideration for which it is given, it has been held in a number of cases that if the instrument is known by the debtor to be bad or of no value, he may, on discovery of the fraud, be immediately sued on the original liability.

Upon a creditor taking a negotiable bill on account of a debt, it may be said that he cannot sue on such debt until the bill is due and dishonoured, but, if not negotiable, his right of suing would perhaps not be suspended during the currency of the bill. If interest, however, were reserved by the bill, the creditor would probably be incapacitated from suing until the instrument became due, for in such a case the transaction might be viewed as an agreement to give time in consideration of the payment of interest.

A note or bill founded upon a contract under seal merely operates as a collateral security, and does not suspend the remedy on the original covenant. *Drake v. Mitchell*, 3 East, 281. And the taking a bill or note in payment of arrears of rent does not suspend the landlord's right to distrain during the currency of the instrument.

Should the creditor receive the bill or note of a third person from his debtor, the latter being drawer or indorser, the creditor must, before he can sue on the precedent or original debt, prove that due diligence has been observed by him in presentation and in giving notice of dishonour. *Smith v. Wilson*, Andrews, 187; *Kearslake v. Morgan*, 5 T. R., 513; *Bridges v. Berry*, 3 Taunt., 130; in the first of which cases it was held to be no excuse in the creditor not presenting a note for payment at the proper time, because he had given a receipt bearing that the debt should only be considered paid when the note was paid. If due

wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his secret mind, 'I suspect there is something wrong, and if I ask questions it will be no longer suspecting, but knowing, and then I shall be unable to recover,' I think that is dishonesty."

Bill as Payment.
Fraud.

Suspension of Remedy for Debt.

Effect in connection with Contract under Seal, or Arrears of Rent.

Proof of due Diligence.

Bill as
Payment.
Proof of due
Diligence.

diligence has not been observed with the bill by the creditor, or if he has altered it, or done any other act which would have the effect, in law, of discharging the other obligants, he by such conduct releases the debtor from all claim, even for the original debt. Cases supra, and Alderson *v.* Langdale, 3 B. and Ad., 660, ante p. 130.

If, however, the debtor, in giving the bill of a third party, should not indorse the instrument, it has been held sufficient for the creditor, when suing for the original debt, to shew that the bill still remains in his hands, without proving presentment or notice of dishonour. Goodwin *v.* Coates, 1 M. and Rob., 221; Bishop *v.* Rowe, 3 M. and Sel., 362.*

Effect in
connection
with Contem-
poraneous
Debt.

Should the debtor deliver a bill or note without indorsement, not for a pre-existing or antecedent, but for a contemporaneous or concomitant debt, such as for money received, or in payment of goods or securities bought at the moment, then, unless he agrees to hold himself responsible, he is free from all subsequent liability, such a transaction amounting to an exchange or sale of the instrument, the creditor or transfece being presumed to take it, with all its risks, as money. Fenn *v.* Harrison, 3 T. R., 759; Evans *v.* Whyle, 5 Bing., 485; Simpson *v.* Sikes, 6 M. and Sel., 295; Rogers *v.* Langford, 1 Cro. and M., 637; Raphael *v.* Bank of England, 25 L. J., C. B. 33. And it has been held that bills given in the afternoon for goods purchased in the morning of the same day was payment, not of a contemporaneous, but of a pre-existing debt. Camidge *v.* Allenby, 6 B. and C., 373. In ex parte Blackburne, 10 Ves., 206, it is true, the Lord Chancellor seemed to be of opinion that, when unindorsed bills were

* Of the advantage of suing on the bill rather than on the consideration, Byles, 9th ed., 402, says: "When a bill is dishonoured, the owner has his option to sue on the bill or on the consideration. It is advisable to sue on the bill—first, because it reduces the debt to a certainty; secondly, because less evidence is necessary; thirdly, in an action on the bill, proof of payment of the bill lies on the defendant; but in an action on the consideration only, if defendant show that a bill was given, plaintiff must prove that the bill was not paid."

delivered for goods at the time of sale, the purchaser would be liable should they turn out bad. But the distinction seen between taking unindorsed bills for a pre-existing and for a contemporaneous debt appears now to be well Bill as Payment. Contemporaneous Debt. recognised, the principle apparently being that, in the case of a pre-existing debt, the creditor is entitled to cash, and, on receiving an unindorsed bill or note which has become payable to bearer, he merely takes it out of favour to the debtor, on the implied understanding that it will not be payment if it turn out to be of no value, without fault of the creditor; while in the other case the delivery of such an instrument is looked upon as an absolute sale or exchange of it for the goods or consideration received at the time by the transerrer, the latter being in law only considered to guarantee the genuineness of the instrument, or that it is not forged or fictitious. In a case of mere change, however, as where a person requests and receives as a favour change for a note, there is little doubt, we presume, but that the Courts would require him to refund the money should the instrument prove worthless, and no laches be committed in presentation and notification of dishonour.

If a new bill be given in payment of a dishonoured bill, and the latter be retained by the creditor, the liability of parties to it will revive should the former not be paid. *Ex parte Barclay*, 7 Ves., 597; *Bishop v. Rowe*, supra. And even if the new bill be paid, he may recover on the previous bill should the amount of principal and interest due thereon be not covered by the amount of the new bill. *Lumley v. Musgrave*, 4 Bing., N. C., 9. The holder of an old bill renewed cannot sue upon it until the renewal is matured. *Kendrick v. Lomax*, 2 C. and J., 405.

A negotiable bill given in discharge of a debt, and then lost, is at common law payment. *Woodford v. Whiteley*, M. and M., 517. But we have already seen that the owner may enforce payment of the amount of the instrument on giving the necessary indemnity. Loss.

Bill as
Payment.

Creditor
taking Bills of
a third party.

We may further add, as regards the effect upon the original debt, that if a creditor is paid by a cheque, and he prefers to take the amount of it from the banker in bills instead of cash, the bills will be at his own risk. *Smith v. Ferrand*, 7 B. and C., 24, and see *Strong v. Hart*, 6 B. and C., 160. If the cheque, however, stipulates payment by bills, and he takes them and uses diligence in their negotiation, he, upon their dishonour, will be held entitled to recur to his original claim. *Ex parte Dickson*, cited in 6 Term Reports, 142; *ex parte Blackburne*, ante 336, in which case the purchaser of commodities had given the seller a cheque on his bankers, from whom were received, as agreed upon, a bill at three months' date in payment of the debt. The acceptors and drawers became bankrupts, and the seller, having received dividends, under their commissions was permitted by the Lord Chancellor to rank for the balance of his debt on the estate of the purchaser. It was contended that the latter should be considered discharged, since the seller had taken a bill in terms of the agreement with him without requiring his indorsement. But the contrary was held, and it was also held that the seller might claim on the estate without being bound to give up the bill. The Lord Chancellor said on the former point: "I take it to be now clearly settled, that if there is an antecedent debt, and a bill is taken without taking an indorsement, which bill turns out to be bad, the demand for the antecedent debt may be resorted to. It has been held that if there is no antecedent debt, and A. carries a bill to B. to be discounted, and B. does not take A.'s name upon the bill, if it is dishonoured there is no demand, for there was no relation between the parties except that transaction, and the circumstance of not taking the name upon the bill is evidence of a purchase of the bill. In a sale of goods the law implies a contract that those goods shall be paid for. It is competent to the party to agree that the payment shall be by a particular bill. In this

instance," added his lordship, "it would be extremely difficult to persuade a jury under the direction of a judge to say an agreement to pay by bills was satisfied by giving bills whether good or bad." But if in a cheque of this description, viz., to pay by bills due at a distant date, the creditor, instead of taking the bills, allows the bankers to transfer the amount to his own account with them, this will be considered tantamount to his having received the money and then deposited it with the bankers, and therefore the debtor will be released. *Bolton v. Richards*, 1 Esp., 106, 6 T. R., 139.

Should the original debtor not suffer by the omission, notice to him of the dishonour of a bill unindorsed by him, and taken from a third party, is unnecessary.*

BILLS, LIEN.—Where a person has a lien on goods, the taking of a bill in payment will in general determine the lien. Thus, where a shipowner had a lien on goods for freight until the delivery of "good and approved bills," and took in payment a bill and negotiated it, though he at first objected to it, it was held that such negotiation amounted to an approval of the bill and a renunciation of his lien on the goods. *Horncastle v. Farran*, 3 B. and Ald., 497. If the goods are not delivered, and the instrument remains in the hands of the seller and is dishonoured, the lien revives. *New v. Swain*, 1 Dans. and L., 193; *Valpy v. Oakley*, 16 Q. B., 941. And in *Gunn v. Bolckow, Vaughan, & Co.*, L. R., 10 Ch., 490, it has been held that a seller's lien is only conditionally relinquished by taking the acceptance of a purchaser, and that it revives on the dishonour of the

* "A surety," says Bayley, 286, "though not a party to a bill or note, may be discharged by want of notice and neglect to present, if it be probable he would otherwise have been safe; as if the parties who ought to have paid were solvent when the bill or note became due, and have failed since. But a person not party to a bill or note cannot complain of laches or want of notice unless he can shew it has done him prejudice. And if he can prove it has done him prejudice, he can only recover to the extent of such prejudice. Therefore each case will depend upon its own peculiar circumstances."

Lien.

bill although negotiated, overruling the doctrine laid down in *Bunney v. Poyntz*, 4 B. and Ad., 568.

Real Property.

The lien which a seller of lands has over them for the price is not relinquished by his taking bills or notes in payment and negotiating them. *Ex parte Loaring*, 2 Rose, 79; *Grant v. Mills*, 2 V. and B., 306. The lien which a seller of real property has is founded entirely on equity.

Definition and nature of Lien.

But here, besides alluding to the effect which the taking of a bill or note has upon a lien, it will be proper for us to extend our remarks to the consideration of the nature of a lien itself, and more particularly as to what constitutes the subject of a banker's lien, and how far his powers may be exercised under this right. "A lien," as has been defined by Mr. Justice Grose, "is a right in one man to retain that which is in his possession belonging to another till certain demands of him, the person in possession, are satisfied." *Hammond v. Barclay*, 2 East, 227. But, as will presently be seen, it is not possession in all cases that confers the right of lien, as the subject must not only have been legitimately acquired, but must be so held as to render it properly available and effective in the hands of the party in possession. In law, liens are classed as *particular* and *general*, the former being confined to the right of possession in connection with a particular contract or transaction, the latter having reference to a series of transactions or extending to transactions beyond the one out of which possession has arisen. As the law favours particular liens, and views with disfavour general ones, the latter do not prevail unless under established custom or by express agreement.

Particular and general.

Time.

Renunciation.

A lien is available, though the debt for which a party retains possession is of more than six years' standing. Should possession of the goods or securities be parted with the lien is gone, and, in general, where a lien exists for a debt, it is waived by taking security for the debt. In

the first instance, however, where bankers, with whom a note had been deposited by the payees in security of an advance, had sent it back to the latter for the purpose of collection, and it was found unpaid amongst the effects of the payees on their bankruptcy, it was held that the bankers had not, by sending the note for the special purpose in question, renounced their lien over it, but that they were entitled to have it back from the payees' assignees. *Bruce v. Hurley*, 1 Stark., 23.

In their advances to a constituent, bankers have for their general balance of account a lien upon all securities of the constituent which come into their hands, even though he should not be known to the bankers as the real owner of the securities, and had no authority to give a lien. *Barnett v. Brandao*, 6 M. and G., 630. Whatever may be the number of accounts kept by the constituent, and although at different branches of the bank, the whole can be treated as one account by the bank, and, if the balance show an overdraft, the right of lien will exist for the amount thus due.

But a lien will not arise if securities be left for a special purpose, such as where exchequer bills are deposited for receiving the interest, and exchanging them for new ones. *Brandao v. Barnett*, 12 Cla. and F., 787. And so, should a constituent, indebted to his bankers for advances, present cash for a draft or bank post bill, the bankers cannot receive the cash in silence as if acquiescing, and then set up their lien, and apply the money in reduction of the constituent's balance. See observations by Lords Lyndhurst and Brougham, in preceding case. Nor will there be a lien in the case of securities left by mistake with a banker. *Lucas v. Dorrien*, 7 Taunt., 279. Nor where plate is deposited for safe custody. *Ex parte Eyre*, 1 Phillips, 235. Nor where the banker refuses to discount securities offered for that purpose, but insists on retaining them. *Joy v. Campbell*, 1 Sch. and L., 346. And no lien will

Lien.

Renunciation.

Banker's
Lien.

Lien.
Banker's
Lien.

attach on the deposit of a partner on his separate account for a balance due by the partnership firm to the bank. *Watts v. Christie*, 11 Beav., 546. And if title deeds be deposited in security of advances, and the property comprised in the deeds be subject to a trust, in breach of which the deposit is made, no lien will attach, although the bankers have had no notice of the trust. *Manningford v. Toleman*, 1 Coll. Ch. R., 670. And, if securities be deposited to cover advances to a certain amount, no lien on these securities will accrue for advances in excess of that amount.

Should bankers, having a lien, take a security payable at a distant day for their debt, the right of lien will be destroyed. *Cowell v. Simpson*, 16 Ves., 278; *Hewison v. Guthrie*, 3 Scott, 311. Where the deed of settlement of a bank stipulated that the bank should have a lien on the shares of such proprietors as were indebted to the bank, and that no transfers of shares should be effectual without the consent of the directory, and these provisions were indorsed upon the certificates of the shares, it was held, in the case of a proprietor largely indebted to the bank, and who had become bankrupt, that the shares could not pass to his assignees, so as to defeat the lien of the bank. *Ex parte Plant*, 4 Deac. and C., 106. In the absence of such special provisions on the part of the bank, however, the shares would have been considered to be in the order and disposition of the proprietor at the time of his bankruptcy, and to pass to his assignees accordingly. *Nelson v. London Assurance Co.*, 2 Sim. and F., 292. And, in a case where a bank's stipulations were that a lien should exist on the shares of every proprietor for debts due by him to the bank, and that the directory should have the power of cancelling and declaring forfeited, or of selling, the shares of such proprietor, or of otherwise dealing with the same for the purpose of obtaining payment of such debts, it was held, where a proprietor had overdrawn his

account, that the bank had a lien both upon his shares and dividends, the notice of the dividends sent him, in usual course, not being considered to operate as a waiver of the bank's rights. *Hague v. Dandeson*, 2 Exch., 741.

Lien.
Banker's
Lien.

But where a trustee, who was at the same time a proprietor in his own right, had invested in his own name, and without notice, trust funds in a bank, and had been in the habit of selling and repurchasing the bank's shares, it was held, on his becoming bankrupt, and after advances had been made to him by the bank on his agreeing to assign some of the shares in his name by way of security, but which assignment was never formally made, that the bank had no lien on any of the shares which had been held in trust, and that, although these shares might have been changed by selling and re-purchasing, the trustee must still be considered as holding, for the purposes of the trust, the same number of the re-purchased shares which stood in his name at the time of the bankruptcy. *Murray v. Pinkett*, 12 Cl. and F., 764. In the following case, however, a lien was held to subsist. The trustees of a trust fund had, as such, an account with a bank. One of their number, being indebted to the bank in his private account, offered to give the bank a lien on the money due to him in respect of his share of the trust fund. This was agreed to, and he, having written a letter to one of the trustees, authorising and requesting him to pay to the credit of his, the writer's, account, with the bank, such sums as might be awarded him out of the trust fund, it was held that this was sufficient to give to the bank a valid lien upon the proceeds of the fund. *Ex parte Steward*, 3 M. D. and D. G., 265.

A bill drawn against a cargo, as thus, "Which place to account of cargo per A.," does not, unless accompanied by the bill of lading, convey a lien over the cargo. *Robey v. Ollier*, L. R. 7, Ch. 695. And, of course, no lien is created on goods by bills which are merely "bale marked,"

Bills.

Lien.
Bills.

Power of
Sale.

or bear the marks and numbers of the goods against which they are drawn, this bale marking being not infrequently made on the instrument, both for convenience and to show the nature of the transaction. It will be recollect that, if bills be deposited specially indorsed to the banker, or blank indorsed, so as to be transferable by mere delivery, he has absolute power over them, and can convey them, though received only for a limited purpose, so as to render them effectual in the hands of a third party.

It has been said that, "as a general proposition, a right of lien gives no right to sell the goods." Gibbs, C. J., in *Pothonier v. Dawson*, Holt 385. But, in the case of negotiable securities lodged with a banker, he may put them in suit, and apply the produce in satisfaction of the lien. *Bolland v. Bygrave*, 1 R. and M., 271; *Scott v. Franklin*, 15 East, 428. The securities include, amongst others, bills of exchange indorsed in blank, or payable to bearer, cheques, Exchequer bills, certificates of shares, coupons, marginal receipt notes, and bonds of foreign governments.

DOCUMENTARY OR SHIPPING DOCUMENT BILLS.

Documentary
Bills.

Bills of this description are so termed because they are accompanied by the shipping documents for the goods against which they have been drawn. The goods thus become a collateral security to the holder of the bill, who may, indeed, be regarded as virtually the owner of them until the bill is taken up or paid.

For
Collection.

The following will afford a full illustration of the procedure in connection with documentary bills, allusion, in the first instance, being made to those which are received by the country banker for collection only and credit. The regular course in this case is to receive from the client a letter as follows:—

..... Soapery,
Liverpool, 2nd Sept., 18 .
To the Provincial Bank, Liverpool.

Documentary
Bills.
For
Collection.

Gentlemen,—We beg leave to enclose shipping documents, with bill at 60 ds./s. on Sydney, as per particulars subjoined. Please transmit for collection by next Brindisi mail, crediting our account with the proceeds when received, and oblige,

Gentlemen,

Your most obedient servants,
J. & T. GREASEWINKLE.

PARTICULARS.

Palm Oil and Silicate of Soda, per "Paramatta."

1 invoice.

1 specification of weights.

3 bills of lading.

3 bills of exchange for £169 11s. 3d., at 60 ds./s., on Brisbane & Sons, Sydney, and 1 letter of hypothecation.

—
9 enclosures.

The bill is usually drawn as above, in triplicate, or a set of three, and states that the goods are shipped by a certain vessel, thus:—

Liverpool, 2nd September, 18 .
£169 11s. 3d.

Sixty days after sight of this first of exchange (second and third unpaid), pay to the order of the Provincial Bank one hundred and sixty-nine pounds eleven shillings and threepence sterling, for goods shipped per "Paramatta."

J. & T. GREASEWINCKLE.

To Messrs. Brisbane & Sons,

.....
Sydney.

The letter of hypothecation may be in these terms:—

Documentary
Bills.
For
Collection.

..... Soapery,

Liverpool, 2nd Sept., 18 .

To the Provincial Bank, Liverpool.

Gentlemen,—In negotiating through you our bill of exchange, dated 2nd September, 18 , on Messrs. Brisbane & Sons, of Sydney, at sixty days after sight, for £169 11s. 3d., we hereby hand you the invoice and bills of lading of silicate of soda and palm oil, shipped per "Paramatta," bound for Sydney, deliverable by indorsement to your order.

In the event of the said bill of exchange being dishonoured by non-acceptance or non-payment, we hereby authorise you or your assignees to sell the said goods in Sydney, at such time and in such manner as may be deemed advisable, on our account and risk, subject to the usual charges, and free from all responsibility whatsoever in respect of such sale, and

We are, Gentlemen,

Your most obedient servants,

J. & T. GREASEWINCKLE.

The bank retain the letters, and duly write as follows to their agents in London:—

Provincial Bank, Liverpool,
2nd Sept., 18 .

Dear Sirs,—We enclose for favour of collection and remittance to us of proceeds as usual, bill on Brisbanes, of Sydney, at 60 ds./s. for £169 11s. 3d., along with the relative shipping documents undermentioned, which please to forward by first Brindisi mail.

Should the bill be dishonoured by non-acceptance or non-payment, you are authorised to sell the goods in Sydney at such time and in such manner as may be deemed advisable, subject to

the usual commission and other charges, and free from all responsibility in respect of such sale, and

Documentary Bills.

We are, dear Sirs,

For Collection.

Yours faithfully,

A. B., Manager.

8 enclosures :

Bill of exchange, in trip.

Bill of lading, in trip.

Invoice, and

Specification of weights.

To the Bank of Australia,

London, E.C.

Some five or six months afterwards, say on 18th February following, the bank at Liverpool should hear from the Bank of Australia to the following effect, the bill being paid :—

Bank of Australia, London, E.C.,

17th Feb., 18 .

Dear Sirs,—In fulfilment of the instructions contained in your letter of 2nd September, 18 , we have now the pleasure to enclose our acceptance, due 20th April, for £167 15s. 5d., being proceeds of bill remitted for collection, as per particulars annexed, and

We remain, dear Sirs,

Yours faithfully,

C. D., Accountant.

Bill on Brisbanes, Sydney	£169	11	3
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Less :

Commission at $\frac{1}{2} \%$	£0	17	0
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Exchange...	0	16	10
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Colonial Stamp	—		
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English Stamp...	0	2	0
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			—	1	15	10
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No. 95603.

To the Provincial Bank,		£167	15	5
Liverpool.				

Documentary
Bills.
For
Collection.

This is duly acknowledged:—

Provincial Bank, Liverpool,
18th Feb., 18 .

Dear Sirs,—We are in receipt of your favour of yesterday's date, enclosing your acceptance, due 20th April, for £167 15s. 5d., amount of proceeds of the bill on Brisbanes, Sydney, for £169 11s. 3d., remitted you for collection on 2nd September last, and

We are, dear Sirs,

Yours faithfully,

A. B., Manager.

To the Bank of Australia,

London, E.C.

Advice as follows at the same time being given to the client:—

Liverpool, 18th Feb., 18 .

The Provincial Bank have pleasure in advising Messrs. J. & T. Greasewinckle that their account is to-day credited with £166 10s. 2d., being the proceeds, as undernoted, of the bill received for collection on 2nd September last.

Bill on Brisbane & Sons, Sydney, at

60 ds./s.	£169 11 3
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Deduct:

Commission at $\frac{1}{2}\%$	£0 17 0
---------------------------------------	---------

Exchange	0 16 10
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Stamp	0 2 0
-------------------	-------

I 15 10

Per draft due 20th April	£167 15 5
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Less discount at $4\frac{1}{2}\%$	I 5 3
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I 15 10

Net proceeds	£166 10 2
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In the receipt of the shipping document bill for collection, it may be added, the policy of insurance, which is

always effected on the shipment of the goods, does not accompany the other documents, it being retained in the client's own hands.

When, however, the shipping document bill is received for discount it ought, with the other documents, to be accompanied by the policy of insurance, and the letter of hypothecation should, varying our illustration by another transaction, be as follows:—

For Discount.

Liverpool, 13th August, 18 .

To the Provincial Bank, Liverpool.

Gentlemen,—You have herewith for discount our bill of exchange of this date on Messrs. Marra, Maianang, & Co., of Melbourne, at ninety days' sight for £1099 19s. 3d., accompanied by the invoice and bill of lading of 275 packages of iron wire and 3 coils rope, weighing 55 tons 15cwt. 1qr. 20lbs., shipped on board the Matanga, bound for Melbourne, deliverable by indorsement to your order, together with policy of insurance, effected on the same with the General Marine Insurance Company for £1200.

In the event of the said bill of exchange being dishonoured either by non-acceptance or non-payment, we hereby authorise you, or your assignees, to dispose of the said goods in Melbourne at your discretion, by public sale or otherwise, on our account and risk, subject to the usual commission and other charges, and free from all responsibility whatsoever in respect of such sale; and we hereby further agree to hold ourselves liable to you, or your assignees, for any deficiency on such sale with re-exchange, any surplus thereon being remitted to London at the current rate of exchange for our credit. Should any claim arise on the said insurance, we hereby authorise you, or your assignees, to recover

Documentary
Bills.
For Discount.

the amount under the policy above mentioned, and which we hereby agree to assign to you for that purpose, any surplus in excess of such claim belonging to us.

The bills of lading are not to be given up until payment of the bill of exchange, and

We are, Gentlemen,

Your most obedient servants,

For the Liverpool Iron, Steel,
Wire, and Coal Company
Limited,

HENRY HARDMAN, Director.

By their London agents, the bank at Liverpool are, as in every instance where the transactions are frequent, kept duly informed of the current rates chargeable between banks, the scale—and it may be noted in passing that the fluctuations in the rates do not necessarily depend upon the variations in the Bank of England minimum, as the Australian exchanges are also taken into account—being at the time in question for bills on Melbourne :

At 30 days' sight ...	... ...	$3\frac{1}{2}$	per cent.
" 60 "	... ...	4	"
" 90 "	... ...	$4\frac{1}{2}$	"

And, as 1 per cent. falls to be charged, in addition, by the bank at Liverpool, the rate for discounting the above bill would, to the presenter, be $5\frac{1}{2}$ per cent., and the usual commission. If passed to account, the bill may be credited in full to the client, who will be debited at the same time with the discount, the commission being, of course, embraced in that charged upon the account at the end of the half-year. In forwarding the bill, the bank, who will retain the policy of insurance and the letter of hypothecation, write to the Bank of Australia thus :—

The Provincial Bank,

Liverpool, 13th August, 18 .

Documentary
Bills.

Dear Sirs,—We enclose for discount at $4\frac{1}{2}\%$ For Discount. bill in triplicate on Marra Maianang and Co., of Melbourne, at 90 ds./s., for £1099 19s. 3d., with relative invoice and bills of lading, and shall feel obliged by your paying the proceeds, as usual, to our credit with the London and Westminster Bank.

In the event of the bill being dishonoured either by non-acceptance or non-payment, you are authorised to dispose of the goods in Melbourne, by public sale or otherwise, as you, or your assignees, may judge best, any deficiency on such sale being made good to you, and any surplus thereon being accounted for in the usual way.

The bills of lading are not to be given up until payment of the bill, and

We are, dear Sirs,

Yours faithfully,

A. B., Manager.

To the Bank of Australia,

London, E.C.

On the 15th August, being by return of post, advice will be received by the Bank at Liverpool from both the Bank of Australia and the London and Westminster Bank of the payment of the proceeds.

With the country bank, where the transactions with the shipping document bill are few, there may be no continuous advice of the rates from London, and in this case the client may be credited with the bill in full on the day it is received, and debited with the charges after the necessary communication with London, and receipt of the proceeds. The extra charge by the country bank is generally, as we have seen, at the rate of 1 per cent. for the bill, when accompanied by shipping documents; when not so accompanied, it is usually $\frac{1}{2}$ per cent. more, or $1\frac{1}{2}$ per cent.

Documentary Bills.

Payment by Anticipation.

Short Bill.

By the time the shipping document bill becomes due, the goods should have arrived, and if so, they are stored until payment of the bill. But it may be an object for the acceptor to have the goods at once, and this is secured by his paying the bill under the current rebate of interest.

The following is referable to another species of the shipping document bill, and this will fall to be remitted in the usual way through the ordinary London correspondents of the country bank :—

Everton, 15th August, 18 .

To the Provincial Bank, Liverpool.

Gentlemen,—We beg leave to enclose our draft at 3 ds./s. upon Mr. Enos Eskender, of Constantinople, for £153 15s. 3d., the value of merchandise supplied to him by us, as per invoice already sent him.

Attached to the draft are the relative bills of lading which, it has been arranged, Mr. Eskender shall receive upon his taking up the draft at the Imperial Ottoman Bank, Constantinople.

We will accordingly thank you to forward the draft for collection in the usual manner, and place the proceeds of same to our credit when received.

We are, Gentlemen,

Your most obedient servants,

TWIST BROS. & TICKLEPENNY.

Proof.

By the case of *Banner v. Johnstone*, 19th May, 1871, 5 L. R., 157, where A., at Liverpool, wished to obtain consignments of cotton from cotton merchants at Pernambuco, and they desired security other than his own, and he obtained from Barneds, at Liverpool, a credit by which Barneds authorised the Pernambuco firm to draw on them "against cotton purchased in conformity with instructions," the drafts to be "covered by shipping documents, say invoices

and bills of lading of cotton, addressed to us, and forwarded under separate cover by the same mail which brings the ^{Documentary Bills.} drafts for acceptance, on receipt of which documents we ^{Proof.} engage to honour such drafts," some shipping documents of cotton were sent, and some bills were accepted, and then, before any of the bills matured, Barneds became bankrupt. On a winding-up order, J., who was the agent of the Pernambuco firm, and was also a partner in that firm, claimed to prove against Barneds for the whole amount of the bills, without bringing into account the value of the cotton which had been sold, or which remained in hand. It was held that he could not do so, but was entitled only to prove for the balance. The bill-holders had no lien over the goods in the hands of Barneds so as to enable them to treat Barneds as trustees for their interests. Barneds were only debtors to the bill-holders for the surplus remaining after the goods consigned had been applied to satisfy the acceptances, the Lord Chancellor (Lord Hatherley) observing, in the course of his judgment, that the whole argument for the respondents, founded on the words "drawn against cotton," would give to all the holders of the bills who had intimation of the credit by the reference contained in the bill to "credit No. 20," notice that those bills were drawn expressly against this particular cotton, and that they would by those means acquire a right against the cotton. "Now observe," continued his lordship, "what that argument amounts to. If that be the doctrine of the Court of Equity, which, I venture to say, it has never yet been affirmed to be, notwithstanding the many attempts made at different times by parties interested in bills of this description to obtain injunctions to prevent the disposal of goods against which the bills were supposed to be drawn, or, in other words, to acquire a distinct lien over the goods by that means, the result would be that in the case of every one letter of credit of this kind the bankers giving it would be held to constitute themselves trustees for every

Documentary
Bills.

Proof.

bill-holder, whatever number of bills there might be, whether ten, or twenty, or fifty, or more, and they would be held bound, as trustees for the various bill-holders, to keep a separate account of the proceeds of the goods consigned to them by way of security. No one can doubt that in that case all bankers of good credit dealing largely in these transactions, as most banks in London and Liverpool do, would, as a consequence, have a responsibility cast on them of a kind which would be enough to stop the business of any bank, namely, a responsibility to numerous cestuis que trust, who one and all of them might take alarm, and might think it desirable to file bills to prevent the bankers dealing with property which had been consigned to them for the express purpose of keeping themselves out of advance under the engagements into which they had entered for honouring the bills."

Marginal
Credit Bills.

MARGINAL CREDIT BILLS.—Besides the documentary bill, there are also marginal credit bills, these being generally used for the purchase of produce to be consigned to correspondents in this country who have guaranteed the credit, and these marginal credits are called open credits, to distinguish them from the document credits. The form of the marginal letter of credit used by some of the Scottish Banks is as follows:—

No.....	First of Exchange for £.....
Credit for £....., in duplicate.	Sterling No.....
.....Bank of.....	(Place and date of drawing)
Edinburgh,, 18....	Shanghai,, 18....
To Messrs. A. & Co., China.	.....after sight, pay this first
I hereby, for the.....Bank	of exchange, second of the same tenor
of....., authorise you to draw	and date not being accepted or paid,
the annexed Bill of Exchange at	to.....order, the sum of.....pounds
.....months' sight, for .....pounds	sterling, which charge to the.....
sterling, on... Bank in London, who	Bank of....., as per annexed
will honour the same in conformity	letter of credit.
with its tenor, if presented along	To Bank, London.
with this letter of credit, within	(Drawer signs here)
.....months from this date.	A. & Co.
....., Manager.	

While the document credit can only be used when accompanied by bills of lading, the open credit may be used in any way according to the purport of the margin, this being an unconditional contract that the bill shall be honoured, so that the indorsee of a marginal letter of credit is not bound, in the absence of notice, to inquire whether the same is being used for the purposes for which the credit was issued. *Maitland v. Chartered Mercantile Bank of India, London, and China, 2 H. and M., 440.*

Marginal
Credit Bills.

SPECIAL CREDIT BILLS.

Special
Credit Bills.

There is also in use the special credit bill, as follows:—

Special Credit, No. —/—, £300 Stg.

The	Bank of Australia, Melbourne, , 18 .
The Manager,	Bank, London.

Dear Sir,—I will thank you to cash the drafts, at days after sight, of Messrs. A. & B. of Liverpool, upon Mr. C. D., of Melbourne, to the extent of not exceeding Three hundred pounds sterling, PROVIDED such drafts are presented to you for payment prior to the , 18 , and that they specify that they are “drawn under special credit of the Bank of Australia.

“No. —/—, dated , 18 .”

I am, dear Sir,

Yours faithfully,

....., Manager.

.....,

The bills are drawn in a set, and attached to the above, and, when received by the country banker, the whole are, without his indorsation, forwarded to his London agent for presentation to and payment by the.....Bank, who only recognise the drawers, the bills not being indorsable by others, or intended for circulation.

Special
Credit Bills.

And the following is also in use for persons going to the colonies, and desirous of having money at their disposal after arrival at their destination :—

The Bank of Australia,
London, , 18 .
No. . £300.
NOT TRANSFERABLE.

To A. B., Esq.

We have directed the manager of this bank, at Lyttelton, New Zealand, to place at your credit there the sum of Three hundred pounds, against an equivalent payment made into this office by Messrs. C. D. & Co.

We are, Sir,

Your most obedient Servants,

E. F. } Managing Directors.
G. H. }

Countersigned,

I. J., Accountant.

It will be requisite that the manager be satisfied as to your identity before the money can be paid.

And by some of the Banks a credit (which in effect operates as a limited circular note) in the following terms is issued:—

No. -/-, £50 Stg.	£50 Stg.
.....Bank of.....,	(Place and date of drawing)
London,, 18....	Liverpool,, 18....

To A. B., Esq., Travelling.

I hereby authorise you to draw the annexed Bill of Exchange, on demand, for FIFTY POUNDS STERLING, and the same will be duly honoured if presented herewith.

For the.....Bank of.....,
C. D., Agent,

Entd. E. F., Accountant.

On demand, pay this sole Bill of Exchange, to my order, for the sum of FIFTY POUNDS STERLING, which charge to THE.....BANK OF, as per annexed letter of credit.

(Drawer signs here) A. B.
To The.....Bank of.....,
London.

This brings us to the ordinary
LETTER OF CREDIT,
a document of some antiquity, allusion to one of this

Letter of
Credit.

description being more than once made by Cicero, in his Epistles to Atticus. Thus, in one passage relative to his son, who was about to set out for Athens, he says : " Sed quāero, quod illi opus erit Athenis, permutarine possit, an ipsi ferendum sit ; de totaque re, quemadmodum, et quando placeat, velim consideres." Again, relating to his son's allowance while pursuing his studies in that city : " Quare velim cures (nec tibi essem molestus, si per alium hoc agere possem), ut permutetur Athenas. Quod sit in annum sumptum, ei scilicet Eros numerabit." And, referring to the transmission of money by his wife Terentia : " Scripseras, ut H.-S. xii. permutaret ; tantum esse reliquum de argento." *

The modern letter of credit proper is in the following form, and to it we shall make some allusion, as, though now all but supplanted by the demand order, it is still occasionally in use :—

The Provincial Bank,
Liverpool, 21st November, 1879.

£350

Sir,—On demand, please honour the drafts of SIR WILLIAM GORDON, Baronet, to the extent of THREE HUNDRED AND FIFTY POUNDS Sterling, on account of George Stanhope, Esquire, and debit this bank, as advised.

I am, Sir,

Your most obedient servant,

A. B., Manager.

No. 63/1285.

Entd. C. D., Accountant.

To E. F., Esq.,

Manager of Bank,
 Inverness.

* Ciceronis Epistolarum ad Atticum—Lib. xii, Epist. 24, xv 15, xi 24. It may be interesting to note that Atticus, famed as the most accomplished Greek scholar of his age, and distinguished alike for his munificence and probity, was, at the time of Cicero's correspondence with him, more or less actively engaged as a banker.

Letter of
Credit.
Stamp.

The instrument is subject to the same duty as that imposed upon bills of exchange, and accordingly, when payable on demand, as above, it will be stamped with the penny stamp. We have seen, however, ante p. 93 n., that a "letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom, payable in the United Kingdom," is exempt from stamp duty.

Parties.

From the preceding form, it will be observed there are four parties to the letter of credit—the payee or person to whom it is to be sent by the remitter, the remitter or person procuring it, the banker who grants it, and the banker upon whom it is drawn for payment. The rights and obligations of the parties will be gathered from the cases and observations which follow. The case of Orr and Barber and others *v.* The Union Bank of Scotland, Court of Session, Edinburgh, 31st January, 1852, thus given in a condensed form in 12 Bank. Mag., 139, was an action brought for payment of a sum of £460 9s., on the ground that the Union Bank, by granting a letter of credit for that amount, in favour of Messrs. Orr and Barber, on the Manchester and Liverpool District Bank in Liverpool, became bound that the drafts of the payees to that extent should be honoured, and that they had failed to secure performance of this obligation. The facts of the case are:

On the 22nd October, 1844, Mr. Campbell, with the view of making a remittance to Orr and Barber at Liverpool, paid into the Union Bank, at Glasgow, £460 9s., and, in return, received a letter of credit on the District Bank, in the usual terms, and which was posted by Campbell, on the same day, to Orr and Barber. It arrived duly in Liverpool, and was received, in the absence of Orr and Barber, by their clerk, who immediately presented it, along with a draft bearing to be signed by that firm to the bank on which it was drawn, and the bank at once paid the amount.

Rights and
Obligations
of Parties.

Orr and Barber, on returning, found that the clerk had absconded, and that he had obtained payment of the letter of credit in the way mentioned. They thereupon claimed repayment, on the ground that the draft was forged, and that the terms of the letter of credit being those of a mandate to honour the drafts of Orr and Barber, they fell to be strictly fulfilled, which could not be the case so long as the bank refused to honour their drafts. It was elaborately argued by the pursuers that it was their drafts that were to be honoured, and not the letter of credit. The law as to forged drafts was, that the bank was responsible for the loss, as such a deed was not the deed of the party whose name it bore. According to this view, the bank were bound to repay the contents of the letter of credit to the parties against whom a forgery had been committed.

The defenders denied any contract with Orr and Barber; their contract was with Campbell alone. What they contracted to do was to give Campbell a good and available letter of credit on the bank named in the document. When they did that, they had discharged all the obligations they had undertaken. Orr and Barber had no claim on them. If Campbell had not paid his debt to them, that was not their affair; and if, by means of the letter of credit, he had done so, then they had no ground of complaint at all. But the defenders had implemented their obligation to Campbell. They had given him a good letter of credit as a solvent bank. This letter had neither been dishonoured nor had payment of it been refused. On the contrary, it had been paid, and, if the pursuers had not succeeded in getting the money, that was through their own fault and negligence, or the fraud of their clerk, or both. The plea that the defenders were bound to secure actual payment to Orr and Barber could not be sustained, as the letter of credit contained only a request to honour the drafts of Orr and Barber. All that was undertaken was to give a "credit" on Liverpool in their favour. The accounts

Letter of Credit.
Rights and Obligations of Parties.

betwixt the Liverpool and the Glasgow Bank had been settled with reference to the sum in this cash credit, the voucher for the payment of which remained in the former bank. With regard to the point of payment upon a forgery, although it was indisputable that such payment was no payment in law, the article stolen here was the letter of credit. To recover that, Orr and Barber required to bring an action of trover against the English bank, who had possession of the document. This was clear, according to the case of *Johnson v. Windle* (3 Bing. 225). But, again, it was true, as to English law, that, where there was gross negligence on the part of the owner of the forged document, its payment would be sustained. It was, in all likelihood, the knowledge of this contingency that induced Orr and Barber to direct their proceedings against the Glasgow Bank instead of the Liverpool Bank.

The case had been brought before the Court on the 18th January, 1851, but their lordships proving to be equally divided in their judgment, the opinions of the other judges were ordered to be taken. The result of this consultation was, that eight gave their opinions in favour of the defenders and one against.

The Court unanimously concurred with the majority of the consulted judges, Lord Cunningham, who had formerly differed in opinion, stating that, on a fuller consideration of the case, he had come to the same conclusion as the majority of the Court. The defenders were accordingly assailed from the action, with expenses.

The drawee paying forged drafts against a letter of credit is not protected, the 16 and 17 Vic., cap. 59, sec. 19, not applying to these instruments. *British Linen Company v. Caledonian Insurance Company*, 4 Macq., 107.

Forgery.

Refusal of Payment.

If payment of the credit be refused, the payee can only look to his remitter, as he cannot enforce payment from the banker so long as the latter has not rendered himself responsible by forming with him some new contract. This

is fully established by the rule laid down in *Williams v. Everett*, ante 246; *Scott v. Porcher*, 3 *Merivale*, 652; *Brind v. Hampshire*, 1 *Meeson and Welsby*, 365, and other cases. In the last-mentioned case the defendant, agent of the remitter in the transaction, had advised the plaintiff or payee that money had been received on his behalf, and wished to be informed where and how it should be delivered. The remitter, however, countermanded the order to pay, and the plaintiff was held not entitled to recover from the agent. The effect of the notice given by the latter was considered by the Court in the following judgment: "The direction remains countermandable by the remitter until it is executed either by the actual delivery of the chattel or money to the remittee, or by some binding engagement entered into between the agent and the remittee, which gives the latter a right of action against the former. That was the doctrine laid down in *Williams v. Everett* and *Scott v. Porcher*. The utmost effect that can be given to the notice referred to is that the defendant states that he has received the bill for the use of the plaintiff; but there is no contract by him to hold it as the agent for the plaintiff for any new consideration, nor any assent by the plaintiff to the defendant's holding it as his agent. There is nothing whatever to show that the plaintiff could not still sue the remitter on the original consideration, and require the money to be paid to him instanter."

Application to the bank for payment should be made by the payee within a reasonable time after receipt of the credit. The banker to whom the credit is addressed should not make payment until he has received the usual advice in such cases.

More particularly to the cashiers or tellers, and to the branch and agency officers of a bank, it is a matter of some importance that the letter of credit, along with its substitute, the demand order, should be clearly, briefly, and

Letter of Credit.

Refusal of Payment.

Payment Counter-mandable.

Presentation.

Advice.

Importance of instrument being regularly drawn.

Letter of
Credit.

Importance
of its being
regularly
drawn.

Negotiable
Government
Securities.

regularly drawn, and that the amount expressed in figures should be uniformly placed in one particular part of the instrument, as at the top in the preceding form. When these requisites have not been observed we have known much annoyance caused, more especially to the branch officer, who, in the course of a single forenoon, has perhaps sometimes to record in his books no fewer than three or four hundred of these documents paid on account of correspondents in all parts of the kingdom.*

We have now pretty well exhausted this, the largest and not the least important, part of our treatise; but, before finally taking leave of it, it may not be out of place to make some allusion to those negotiable Government securities known as

EXCHEQUER BILLS,

TREASURY BILLS,

AND

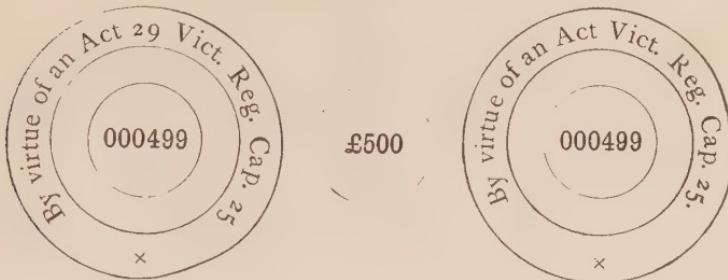
EXCHEQUER BONDS.

The Acts, then, regulating Exchequer Bills and Treasury Bills are the 29 and 30 Vic., cap. 25, and the 40 Vic., cap. 2, being "The Exchequer and Treasury Bills Acts, 1866 and 1877." The former also relates to Exchequer Bonds, it having been passed to consolidate and amend the several laws regulating the preparation, issue, and payment of Exchequer bills and bonds; and provisions as to the payment of these and interest out of the permanent annual charge for the National Debt, are contained in the Sinking Fund Act, 1875, 38 and 39 Vic., cap. 45.

* Besides the usual morning's preliminary duties, we have known in the course of a single day's banking practice nearly four hundred of these documents disposed of in this way, and fourteen Branch States, of no inconsiderable magnitude, passed and checked between two, the first and second branch officers. The process of checking or substantiating the entries involves, of course, great caution and responsibility, as, indeed, does, more or less, every operation of banking, and is sometimes both tedious and intricate.

The following is the form of the Exchequer bill :—

Exchequer
Bill.
Form.



This Exchequer bill entitles * or order, to claim payment of Five hundred pounds at the Bank of England, out of the Consolidated Fund, at the expiration of any period of twelve months, not later than five years, from the date hereof.

Interest on this bill will be paid half-yearly, at the Bank of England, at such rate per cent. per annum as shall be notified from time to time in the London Gazette by the Commissioners of Her Majesty's Treasury.

This bill may be paid for the sum of Five hundred pounds and interest accrued thereon to the receivers and collectors in the United Kingdom of any of the public revenue aids, taxes, or supplies, or to the account of Her Majesty's Exchequer at the Bank of England, at any time in the last six months of every year commencing from the day of the date hereof, in which it shall have currency by law.

W. DUNBAR.

Signed in the presence of
W. Treherne.

* If the blank is not filled up, this bill will be paid to bearer.
N.B.—The cheque must not be mutilated.

EXCHEQUER BILL INTEREST CERTIFICATE.

Exchequer
Bill.
Form.

£ 500.

Per Act 29 Vic., cap. 25. 000499.

This coupon entitles the bearer to interest on the above sum for the half-year to 11th June, 1881.

WM. DUNBAR,
Comptroller and Auditor-General.

Treasury Bill. And the Treasury Bill is in these terms :—

Form. No. . Due , 18 . No. .
£ . £ .

By virtue of an Act 40 Vic. cap. 2.

London, , 18 .

This Treasury Bill entitles*, or order, to payment of pounds at the Bank of England, out of the Consolidated Fund, on the , 18 .

In pursuance of .

(Signed)

Comptroller and Auditor-General.

* If this blank be not filled up, the bill will be paid to bearer.

Of the 29 and 30 Vic., cap. 25 :

Exchequer
Bills, Bonds,
and Treasury
Bills Act,
1866.

Section 1 repeals former enactments.

Section 2 relates to the definition of terms.

Sections 3 and 4, to the mode of preparing Exchequer bills.

Section 5, to the rate of interest, which must not exceed £5 10s. per cent. per annum.

Section 6, to mode of issue, which is by the Bank of England, to the person or officer named by the Treasury warrant.

Section 7 directs the bills to be charged to the Consolidated Fund.

Section 8 relates to their being advertised for payment annually, and, if payment is not claimed, "then the Exchequer bills not so paid off shall continue to have legal currency for the next following twelve months, and so on from year to year, until such principal moneys shall be claimed by and paid to such holders, or until such Exchequer bill, the coupon of which shall be exhausted, shall be exchanged for new bills; but such holders shall have no title to claim payment of such principal moneys at any interval of time between the times fixed by such yearly notices," except as provided by

Exchequer
Bills, Bonds,
and Treasury
Bills Act,
1866.

Section 9, when, during the last six months of every year from the date during which Exchequer bills have legal currency, they are to pass current for duties payable to the Crown.

Section 10 relates to interest to be paid to the time at which the bills are paid; and, by

Section 11, the parties are to write their names and the date of payment on the bills.

Sections 12 and 13 relate to the power of the Treasury to issue bills in lieu of those paid; and, by

Section 14, bills defaced by accident are to be exchanged for new bills.

Section 15 relates to penalty in cases of forgery.

Section 16, to the replacement of lost or destroyed bills, on taking oath before the Lord Chief Baron, or other Baron, of the Court of Exchequer, and security being given to repay the money, in case the bill should be afterwards produced. By

Section 17, fractions of a penny for interest are not allowed.

Sections 18 to 21 contain provisions in connection with the paper, etc., for the bills.

Exchequer
Bills, Bonds,
and Treasury
Bills Act,
1866.

- Section 22 relates to the power of the Treasury to cause principal and interest to be paid off at any time.
- Section 23, to the cancellation of discharged bills.
- Sections 24 and 25 relate to old outstanding bills.
- Section 26 extends sections 3, 4, 5, 6, 14, 16, 17, 18, 19, 20, 21, 22,*23, and 24, to Exchequer bonds.
- Section 27 relates to the permissive registration of Exchequer bonds.
- Section 28, to interest of bonds of 16 Vic., cap. 23, which is to be paid until they are redeemed.
- Section 29, to payment to Bank of England for management of the unredeemed public debt in Exchequer bills and bonds ; and, by
- Section 30, the powers in former Acts of advancing sums on credit of Exchequer bills and bonds are continued to the Bank of England.

Treasury and
Exchequer
Bills Act.
1877.

Of the 40 Vic., cap 2 :

- Sections 1 and 2 relate to title and definitions.
- Section 3, to power of Treasury to raise money by issue of Treasury bills. By
- Section 4, payment to be not more than twelve months from date of bill, and interest payable at such rate and in such manner as the Treasury may direct.
- Section 5. Money raised to be paid into the Exchequer, and charged to Consolidated Fund.
- Section 6. Exchequer or Treasury bills may be issued in lieu of bills to be paid off during the same financial year.
- Section 7. Provisions, s.s. 3 and 5, of Sinking Fund Act to extend to Treasury bills.
- Section 8 relates to mode of issue.
- Section 9, to cancellation, etc.
- Section 10, to forgery and other frauds.

Sections 11 and 12, to payment to Bank of England
for management, etc.; and, by

Section 13, the Bank of England may lend to the

Crown, upon the credit of Treasury bills, any sum
or sums not exceeding, in the whole, the principal
sums named in such bills.

By the above-named Act of 1877, the Treasury bill was introduced, while the Exchequer bill was first issued in the reign of William III.

Previous to 1861, the interest on Exchequer bills was calculated at a daily rate per cent., payable, with the principal, in March or June, and these bills were thus termed March or June bills. From 1861; however, the interest has been calculated half-yearly.

The Exchequer bond was, after much opposition in both Houses of Parliament, introduced by Mr. Gladstone, in 1853, by an Act for redeeming or commuting the annuity payable to the South Sea Company, and certain £3 per cent. annuities, and for creating, along with the issue of the Exchequer bond, new £3 10s. per cent. and £2 10s. per cent. annuities.

The bonds are payable to bearer simply, and are issued for fixed periods, and carry interest, until payment, half-yearly, these, with the Exchequer and Treasury bills, forming the unfunded debt of the country, the State, in connection with the other Government securities, contracting not to pay principal, but interest only. The amount of the bills and bonds in circulation varies greatly, and necessarily depends upon the exigencies of the Government. These instruments have been found of great convenience and advantage to the public. They are comparatively steady in value, not being subject to the violent fluctuations that sometimes occur in the prices of the funded debt.

All are negotiable, payable to bearer, and pass by delivery. The bills, however, may be made payable to

Treasury and
Exchequer
Bills Act,
1877.

Introduction
of Treasury
and
Exchequer
Bills.

Interest on
old and new
Exchequer
Bills.

Exchequer
Bonds.

Utility of the
Bills and
Bonds.

Exchequer
Bill, &c.

Deposit with
Banker.

order by the blanks being filled up with the payee's name, in which case they become transferable by his indorsement.

If the banker makes advances, bona fide, on the deposit of forged bills or bonds, he may recover the amount as soon as such instruments are repudiated at the Exchequer.

Bank of England v. Tomkins, 6 Jur., 348.

Unless deposited for a special purpose, as for receiving the interest, or exchanging for new securities, the bills and bonds are subject to the lien of the banker, although, as we have already seen, ante 341, the client who deposits them is not the real owner, and has no authority to give a lien.

PART IV.

CHEQUES.

Until recently both the law and the practice in connection with cheques were in a very unsatisfactory and uncertain condition, rendered the more so by the provisions of the various Acts passed in connection with these instruments. Formerly cheques payable to bearer on demand, and drawn upon a banker, were exempt from stamp duty if issued within ten miles of the bank, the distance by a subsequent Act being extended to fifteen miles, provided the place of issue were specified in such cheques, and that they were dated on or before the day on which they were issued, and that they did not direct payment to be made by bills or promissory notes. Many questions arose under these provisions, and even as to what constituted a banker, it having been held that, for the purposes of exemption, he must have been enrolled according to the requirements of 7 and 8 Vic., cap. 32, sec. 21. Actions arose on cheques not truly specifying the place of issue, on cheques bearing a specified place, but this being only the residence of the bankers, on post-dated cheques, on cheques payable to a certain party without the addition of the words, "or bearer;" and heavy penalties were inflicted upon drawers, persons knowingly negotiating and bankers knowingly paying unstamped instruments in cases where it was necessary they should be stamped. If not falling within the exemption it was requisite that the cheque should bear

Former Law
and Practice.

the ad valorem stamp duty on bills ranging from one shilling upon amounts between £2 and £5 5s., to twenty-five shillings upon £3000. Besides being subject to the penalty, the banker was not allowed credit for the amount of the cheque against the drawer or his representatives. By several successive enactments the cheque, likewise, could not be drawn for sums under one pound.

Numerous actions also arose upon the various ways in which cheques were crossed, the general effect apparently being that whether crossed specifically or in blank payment could only with safety be made to a bank, it being immaterial whether presentment was effected by the particular bank or banker named in the crossing, or by any other banker. When crossed in blank with the terminating words "and Co." instead of "..... Bank," such crossing was, according to the opinion and practice of some of the profession, held applicable only to private banks. In the treatment of double or more crossings each bank appeared to have its own practice, some bankers refusing to pay cheques with such crossings, particularly if the first or any subsequent crossing was erased, and others paying to the last crossed bankers either with or without inquiry, or questions asked. And even many of the country banks, on the presentation by a private individual of a crossed cheque, were in the habit of paying its amount to him if they were satisfied as to his respectability. When the cheque bore two parallel transverse lines only, there was much difference of opinion as to whether this amounted to a crossing, though in general country practice it may be said that latterly little or no heed was given to the circumstance in paying the instrument.

On many points affecting the stamp duty appeals were made to the Commissioners of Inland Revenue for their opinion, and in several instances after the passing of fresh Stamp Acts detailed explanations, after consultation with the law officers of the Crown, had to be furnished for the

guidance of bankers and their constituents. In some cases the views and opinions emanating from the Commissioners themselves were such as to be really of little practical utility, and could not in all instances be regarded as either authoritative or correct.

Such appears to have been the state of the law and practice previous to the statutes which now govern the instrument.

By 23 and 24 Vic., cap. 111, sec. 19, cheques for sums less than twenty shillings are made lawful, so that such instruments may now be drawn for any amount.* But still there is doubt as to the effect of the terms of the enactment, that the cheque be drawn upon the banker, "who shall bona fide hold money to or for his (the drawer's) use," it being thought that such a cheque would be illegal if the drawer had no funds in the hands of his banker.

By the Stamp Act, 1870, the enactments prohibiting the post-dating of cheques are repealed, but the issuer of a post-dated cheque would appear to render himself liable to a penalty of £10, under sec. 10 of the Act.

The place of issue need not now be specified in the cheque.

By the 16 and 17 Vic., cap. 59, the cheque payable to order was introduced, and the banker exonerated from the necessity of ascertaining whether the indorsement of the payee or that of any subsequent indorser be genuine, the terms of the enactment, sec. 19, being, "provided always that any draft or order drawn upon a banker for a sum of money payable to order on demand, which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof; and it shall

* We have seen ante page 118, that negotiable bills drawn for less than £1 are illegal.

It may be added that the issuing or negotiating such bills subjects for each offence to a penalty not exceeding £20 nor less than £5.

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and Practice.

Present Law
and Practice.

Cheques
under £1.

Post-dating.

Place of Issue.

Payable to
Order.

not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable, either by the drawer or any indorser thereof." Had the cheque not been thus rendered exempt from the principle establishing the banker's liability for a forged indorsement in the case of bills, the use of the instrument would have been of a very restricted nature, both from the great responsibility that would have been thrown upon the banker and the inconvenience and delay that would have been occasioned in investigating the authenticity of the signatures, reasons which would have been sufficient to have made the banker discountenance anything like a general adoption of the instrument.

Under the above section it has been held that the drawee banker alone is protected, and not other parties ; *Ogden v. Benas and another*, L. R., 9 C. P., 513; 30 L. T., 682; so that the transferee of a cheque stolen and indorsed by a forger has no title to the amount as against the loser, unless the loser have been guilty of negligence in the transaction itself, and been the proximate cause of the loss, in which case his negligence would operate by way of estoppel to him. *Arnold v. Cheque Bank*, L. R., 1 C. P. D., 578; *Baxendale v. Bennett*, L. R. 3 Q. B. D., 525. The judgment of the Court in *Ogden v. Benas and another*, ubi. sup., was to this effect, that though the sum at stake was small the principle at stake was important. That the plaintiff had sent a cheque crossed "and Co." on the London and County Bank to Vincent Willis for £12 12s. The defendants were money-changers in Liverpool, and a person unknown to them presented it to them indorsed, "Vincent Willis." The person was respectable in appearance, and on being asked if he was the indorser said "Yes," and, to show it, erased the indorsement and re-indorsed it "Vincent Willis." The defendants told him to call again on

the next day but one. They then sent the cheque to their London correspondents, who presented it to the plaintiff's bankers, who paid it, and the money, less one shilling deducted for commission, was handed to the presenter of the cheque by the defendants. The indorsement proved a forgery, and the question was, how far the above section of the Act prevents the plaintiff from following his money to the hands of the defendants, who, without title, received it. By that section "bankers," added the Court, "are protected as against their customers, but the protection does not go beyond the bankers, nor does it alter the nature of the transaction as regards the plaintiff's right to get the money from another person. Though a banker is protected, yet the money is the plaintiff's, which the defendants' correspondents had no right to receive. The defendants have had the benefit of the discount, and therefore the attempt to make the defendants mere agents of the forger cannot vary the question. They are not the mere agents. They discounted for reward. They got the proceeds into their hands; therefore we think the plaintiff had a right to recover his money from some one, and can follow it into the hands of a person who has no right to receive it."

And it has been held by the Court of Appeal that the indorsement of a cheque per procuration, or "as agent," is an indorsement purporting to be by the payee within this section, so as to protect the banker paying it, though the person making the indorsement has no authority to indorse. *Charles v. Blackwell*, January 30, February 16, 1877, being an appeal from a judgment of the Common Pleas Division, discharging an order for a new trial.*

Per
Procuration
Indorsements.

* Much uncertainty and diversity of practice existed amongst the profession with respect to "per pro" indorsements, and indorsements by persons signing as "agents," and even yet, notwithstanding the above case, many of the banks, particularly those of Scotland and Ireland, reject such indorsements, or return them for confirmation by the presenting banker. The Court, consisting of Cockburn, C. J., Mellish, L. J., and Baggallay and Bramwell, J. J. A., admitted the question to be one of difficulty, and an elaborate judgment was delivered by Cockburn, C. J., the most prominent passages being: "Whatever indorsement would have been a sufficient indorsement of a bill of exchange

By the above Act of 16 and 17 Vic., cap. 59, the stamp duty of one penny was imposed upon cheques, but they were exempt if issued within the distance seen.

By 17 and 18 Vic., cap. 83, however, it was enacted, sec. 7, that no cheque so exempted should, unless stamped,

made payable to order, would have been a sufficient indorsement of a cheque so made payable. Therefore, inasmuch as a bill of exchange, payable to a given person, might be indorsed by procuration by an agent having authority to indorse, if an agent having such authority had indorsed such a cheque on behalf of the payees, there can be no doubt that the payment of the cheque by the banker would have been a good payment as between him and his customer, the drawer, and a good payment likewise as between the drawer and the payees, though the agents should have embezzled the proceeds of the cheques. Now, the purpose of the enactment we are dealing with was, when cheques payable to order were expected to become general, to protect bankers against the possibility of forged indorsements. The only reason why cheques had not been drawn payable to order before, being the expense of the stamp, when the Stamp Act of the 16 and 17 Vic. included these cheques among those which should be subject to the penny stamp, it was, of course, foreseen that the great convenience arising from the use of such cheques would make them of constant recurrence. It was equally certain that the use of cheques drawn to order would expose bankers to serious danger from forged indorsements, payment upon which, as the law then stood, would have been to their own loss. It was against this danger that the 19th section of the Act was intended to protect them." "But the danger to which the banker is thus exposed from his ignorance of the handwriting of the indorsement exists as much where the indorsement purports to be by an agent, as where it purports to be that of a payee. The form of indorsement by procuration, though not so common as the immediate indorsement of the payee, is yet sufficiently so to expose the banker to danger from spurious indorsements in this form; and we cannot doubt that it was the intention of the Legislature to protect him from the liability he could not guard against, whatever the form which the indorsement might assume. The enactment must have been intended to apply to both forms of indorsement—to that purporting to be by procuration, as well as to that purporting to be the indorsement of the payee."

And, with reference to the payee, "suppose the cheque to have been delivered in payment to the payee, or to his authorised agent. The cheque then operates as payment, and extinguishes the debt, subject only to the condition that if, upon due presentation, the cheque is not paid, the original debt revives. But, if the cheque is stolen, or lost by the payee, and is paid on presentation by a party into whose hands it has fallen, before the payee has had time to give notice of the loss to the banker, or while he delays giving such notice, the loss must fall on himself. He has taken the cheque in payment, and cannot call upon his debtor for a second payment so long as the latter is in no default as regards payment of the cheque on presentation." But, with reference to the indorsement in the present case, it was said: "Thus far we have been considering the 19th section with reference to a case in which an agent, having authority to indorse by procuration, the indorsement of the agent has been forged. But, in this present instance, we have to deal with a case in which the handwriting of the indorsement is not forged or spurious, but genuine. It is, what it purports to be, an indorsement in the name of the payees by an agent; but the agent, though having authority for other purposes, had no authority to indorse. Is the 19th section applicable to such a case? The enactment was intended to relieve the banker from liability when paying on indorsements, the genuineness of which he has no means of testing; but was it intended to relieve him from the ordinary duty of looking to see, before he pays a cheque made payable to order, that the indorsement is that of the

be remitted beyond 15 miles from the place where payable,
or be received in payment, or as a security, or be otherwise
negotiated or circulated at any place beyond the said
distance, any person contravening being liable to a penalty
of £50. But, by sec. 8, any person who should receive

proper indorser, as he would have to do in the case of a bill of exchange accepted by his customer? If it was incumbent on him to do so, then it may be said that the form of this indorsement, purporting to be that of an agent, would have made it incumbent on him to ascertain, before he paid the cheque, that the agent had authority to indorse, the effect of an indorsement by procuration being, according to the authority of the cases of *Alexander v. Mackenzie*, [ante 122] and *Stagg v. Elliott*, 12 C. B., N. S. 373, to give notice to whoever takes a bill (and the same principle must apply to a cheque) that the agent has only a limited authority, so as to put an indorsee to the necessity of ascertaining that the agent had authority before he took the bill. It is true those were cases in which the indorsee sought to hold an acceptor or indorser liable; but the reasoning would equally apply where the drawee is paying an acceptance or a cheque on which, if payment is made to a party not entitled as the proper transferee of the bill or cheque, the acceptor of the former or drawer of the latter may still remain liable. On the other hand, it may be said that, though an individual or a company, taking a negotiable instrument by indorsement, may well be expected to ascertain the authority of the agent before they consent to take such an instrument on his indorsement, it would be a most serious hindrance to the despatch so essential in banking business, and would create so serious an impediment to the negotiability of cheques drawn to order, if a banker paying on such an indorsement were not held to be protected, and were obliged in every instance first to satisfy himself of the agent's authority, that it may reasonably be assumed that the statutory immunity given to bankers was intended to include such a case. A confirmation of this view may be found in the second branch of the 19th section, which provides that 'it shall not be incumbent on any such banker to prove that such indorsement, or any subsequent indorsement, was made by or under direction of the person to whom the said draft or order is made payable by the drawer, or any indorser thereof.' The purpose seems to have been to make the banker free of all responsibility in respect either of the genuineness or validity of the indorsement, whether purporting to be that of the payee or subsequent indorser on the one hand, or of an authorised agent on the other." And, it was added, "if this reasoning were not satisfactory to our minds, we should be of opinion that this case should go to a new trial, as in one view of it, which was not submitted to the jury on the trial—a circumstance, I think, to be regretted—the payment to Kingsford was a valid payment, independently of the statute. It appears to us that there was evidence, which might well have been submitted to the jury, not only that the appellants had so held out Kingsford as their general agent as to justify persons dealing with them through him in treating him as such, but also to establish the position, notwithstanding the denial of the principal that he was possessed of plenary authority to the extent of indorsing cheques payable to the order of Smith & Co. The business in Jewin Street was carried on exclusively by Kingsford, whose name was printed on the invoices as carrying on the business there for Smith & Co. He conducted the business, not as a manager or foreman, acting under the superintendence and direction of his principals, but apparently as authorised to do whatever was necessary in the business. Smith & Co., the principals, were not known in Jewin Street, nor was there any other place where they carried on business, or could be found in that name. The respondents, in their dealings with Kingsford, do not appear ever to have been brought into contact with his principals. Ostensibly the business was entirely in his hands. It is admitted that Kingsford was authorised to receive payments in cash, and

Stamp. .

any such cheque within the 15 miles could affix to it an adhesive stamp, and negotiate it beyond that distance. And adhesive stamps denoting the duty of one penny might have been used for receipts or drafts without regard to their special appropriation.

By 21 and 22 Vic., cap. 20, the distinction as regards duty was abolished, and all cheques became subject to the one penny duty, continued by the Stamp Act of 1870.

The provision of the 23 and 24 Vic., cap. 111, respecting the affixing of the adhesive stamp, is continued by the Stamp Act of 1870, the enactment, in the latter s. 54, (2), being in these terms: "Provided that, if any bill of exchange for the payment of money on demand, liable

also by cheques, which, we presume, if payable to bearer, he would get cashed at the bankers, and would carry into account with his principals. Had this payment been made in cash, or by a cheque payable to bearer, it would, as I gather from the evidence, have been within the competency of Kingsford to accept payment in either form, and to give a valid receipt. I very much question whether, if Kingsford had accounted to his principals for the whole of the proceeds of this cheque, any exception would have been taken by them to his proceeding in indorsing it. Upon this state of facts, if the question had been left to the jury, they would have been well warranted, I think, in finding, possibly, that Kingsford had implied authority to indorse, though none may have been given him expressly; at all events, that he was so held out to the world as an agent invested with plenary authority, that a cheque payable to the order of his principals might well be paid on his indorsement as their agent. Such a finding by the jury, had it not been cut short by the summary process of a nonsuit, might have prevented all subsequent litigation. Moreover, as far as I can make out, the proceeds of this very cheque may have found their way to the appellants. There is nothing, as I read the evidence, to show that Kingsford actually misappropriated any of the money received upon this cheque. The cheque, as it is exhibited among the documents, appears to have been crossed to the London and County Bank, Aldersgate Street, we presume, the appellants' bankers. All that appears, from the statement of the plaintiff Charles, is, that a sum of £262 odd remains due to Smith & Co., from Kingsford, on the account. It does not follow that the deficiency is of part of the money received on this cheque. But, though we should have thought it better that the question of Kingsford's authority should have been submitted to the jury, being of opinion that the nonsuit may be upheld in point of law, we do not think it necessary that the case should go to a new trial. The question whether the plaintiffs could maintain trover for the cheque is neither more nor less than the same question we have been before considering under another form, and has in fact, incidentally to that question, been already disposed of. A cheque taken in payment remains the property of the payee only as long as it remains unpaid. When paid, the banker is entitled to keep it as a voucher till his account with his customer is settled. After that, the drawer is entitled to it, as a voucher between him and the payee. If the cheque was duly paid, so as to deprive the payees of a right of action, either on it, or in respect of the goods in payment of which it was given, they no longer have any property in it. For these reasons, we are of opinion that the judgment of the Divisional Court should be upheld, and this appeal dismissed."

only to the duty of one penny, is presented for payment unstamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and cancel the same as if he had been the drawer of the bill, and may, upon so doing, pay the sum in the said bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct such duty from the said sum, and such bill is, so far as respects the duty, to be deemed good and valid.

(3). "But the foregoing proviso is not to relieve any person from any penalty he may have incurred in relation to such bill."

And, as will have been observed from the general directions given as to the cancellation of adhesive stamps, ante 94, the person required by law to cancel must do so "by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing." *

A receipt, indorsed on a duly stamped cheque, does not require an additional stamp. 55 Geo. III, c. 184, and 33 and 34 Vic., cap. 97; Sched. Tit. Receipts.

In its nature the cheque has been said to fall under the leading rules applicable to bills of exchange, and, indeed, by some writers an endeavour has been made to place it on the same footing as the bill, so that these and other negotiable instruments might be subject to one common standard, come under one uniform principle, and be

Distinguishing
features of
Cheque.

* The 16 and 17 Vic., cap. 59, required the cancellation of the stamp to be effected by the drawer of the cheque, the cancelling being by writing his name, or the initials of his name, on the stamp, and, if not so cancelled before the instrument was "delivered out of his hands, custody, or power," he was liable to a penalty of £10. Under this Act, little attention was paid to its letter, as the stamp was frequently affixed over the words "or bearer," and "or order" written upon it, and, in other instances, the stamp was affixed to the corner of the instrument, and the amount in figures written on it, the name, or the initial letters of the name, being in neither of these instances written on the stamp. The more general practice, however, was to fix the stamp at the place for the signature of the drawer, who, in signing, wrote across or over the stamp one or two letters of his name, and sometimes the last letter only being upon it, any further cancellation being omitted.

A cheque once issued irregularly could not afterwards be made valid by attaching a stamp to it.

Distinguishing
features of
Cheque.

governed by the same rules of law. As the cheque, however, has been originated to meet more particularly the convenience of daily business, and is intended to be a substitute for cash, possessing all the potency of the latter without the inconvenience and risk attending its possession, it is evident that the use and purposes of the instrument would be greatly impaired and interfered with were it to be placed under some inflexible standard, and accordingly we find that both by the *lex mercatoria* and the practice and usages of banks, there have been established such distinctions in its favour as to render it in a measure an independent negotiable instrument. Thus the cheque is payable on presentation without days of grace. It is never presented to the bank for acceptance but only for payment. By its issue it may be considered as an appropriation to the holder of the money it represents in the bank, and, as stated by Lord Kenyon in *Boehm and others v. Stirling and others*,⁷ T. R., 423, 2 Esp., 574, S. C., the drawer cannot honestly alter the state of his account with the bank so as to interfere with the payment, as such would be a fraudulent misapplication of the appropriated funds. When dishonoured it is not protestable, and the drawer, as being the original debtor and not a surety, as in the case of the bill, is not entitled to notice of dishonour.

In the United States of America, where there are no stamp laws, and where in form the cheque sometimes approximates more closely to the bill of exchange than in this country, the above points have been prominently brought out. In the case of *ex parte Brown*, 2 Story's Reports, 502, where two cheques, drawn on a bank in favour of certain named payees or bearer, dated 18th April, 1841, and made payable, the one on 18th May and the other on 10th June, it was objected that, not being payable on demand, these instruments could not be considered as cheques. That they were in fact inland bills of exchange, and governed by the rules of such as to presentment and

notice. It was held, however, that they were, to all intents and purposes, cheques, subject to all the incidents of such ; that they were payable on the very day on which payment was upon their face demandable, and without any days of grace ; and moreover that the parties, by using the common forms of the bank cheque, impliedly authorised the bank to treat them as cheques payable on the very day designated, or at any reasonable time thereafter. In delivering judgment, Mr. Justice Story observed : "A cheque is not the less a cheque because it is post-dated, and thereby becomes, in effect, payable at a future and different time from that on which it is drawn or issued. This is sufficiently apparent from the case of *Allen v. Keeves*, 1 East, 435. That it may be declared upon as a bill of exchange is no proof that it may not also be declared upon as a cheque. In many cases they are identical in their legal results, *but by no means in all*. Mr. Chitty says that a cheque nearly resembles a bill of exchange, but he adds it is uniformly made payable to bearer, and should be drawn upon a banker or person acting as such. I agree that it nearly resembles a bill of exchange, but ' nullum simile est idem.' It is commonly, though not always, made payable to the bearer ; but I conceive it to be still a cheque if drawn on a bank or banker, although payable to a particular party only by name, or to him or his order. It is usually also made payable on demand, although I am not aware that this is an essential requisite. The distinguishing characteristics of cheques, as contradistinguished from bills of exchange, are, as it seems to me, that they are always drawn on a bank or banker ; that they are payable immediately on presentment, without the allowance of any days of grace, and that they are never presentable for mere acceptance, but only for payment."

In this country, it will be observed, the cheque must, under the stamp laws, be payable on demand. The words "on demand" are very rarely used in practice, and are

Distinguishing
features of
Cheque.

Distinguishing
features of
Cheque.

deemed unnecessary, from the circumstance that an instrument in which no currency or time of payment is expressed is held legally to be payable on demand, or immediately on presentment.

And the drawer of a cheque, different from the drawer of a bill, is not discharged by delay in presentation for payment unless he suffers by it, as by the failure of the banker. By delay the holder, besides taking the risk of the banker's failure, takes also the risk of non-payment in the event of the drawer's death, this being viewed as amounting to a revocation of the banker's authority to pay.

An authority to draw cheques does not include an authority to draw bills.

And on payment the cheque becomes the property of the drawer, though the banker is entitled to retain it as a voucher until settlement of the account.

As regards presentment for payment of the cheque, though it may be kept in circulation for some time after issue, still proper diligence must be used to preserve liability against previous parties, and the general rule appears to be that presentment for payment as against the drawer should be made during bank hours on the day after issue, or as against the party delivering it on the day after receipt. And when delivered at a distance from the place where payable, it will be sufficient for the person receiving the instrument to forward it by the next day's post to his banker or agent, and he should present it on the day after its receipt by him. Beeching *v.* Gower, Holt, C. N. P., 315; Moule *v.* Brown, Arnold, 79. And see Rickford *v.* Ridge, infra, and Bond *v.* Warden, 1 Coll., C. C., 583.

A London banker who receives a cheque by the general post is not bound to present it for payment until the following day. Rickford *v.* Ridge, 2 Camp., 537, where, with reference to presentment by the banker, Lord Ellenborough observed that it would be most inconvenient and

Presentment
for Payment.

unreasonable were the rule to be followed of sending out cheques for payment as soon as they arrived by post; that for Payment. in large towns, where posts arrive at different hours, this could not be effected, and, even if it could, it did not follow that all other business should be laid aside by the banker for the purpose of presenting these instruments. That the rule to be adopted must be a rule of convenience, and that it is convenient and reasonable that cheques received in the course of one day should be presented the next.

It was formerly conceived that a cheque should be presented by the holder personally at the bank for encashment, but by the case of *Prideaux v. Criddle*, L. R., 4 Q. B., 455, it has been held that presentation by post is a reasonable mode of presentment. And see *Heywood v. Pickering*, L. R., 9 Q. B., 428; 43 L. J. Q. B., 145, an action as to the due presentment for payment of a foreign cheque. In this case A., in London, drew a cheque on bankers at Jersey in favour of C., on 27th January, and C. handed it on the 28th to a London bank, who, having no agent at Jersey, sent the cheque the same day by post direct to the Jersey bankers for payment. The cheque in due course of post would have arrived at Jersey on the 29th. The Jersey bankers stopped payment on 4th February, and on the 7th returned the cheque marked "refer to drawer." By the custom of London bankers, when a foreign cheque is paid into a banker, if he has no agent at the place where it is payable, he sends the cheque direct for payment to the drawee banker, who immediately either remits the money or returns the cheque. Cheques drawn on bankers in Jersey are considered foreign cheques. Held, that there was a due presentment for payment of the cheque according to the custom of bankers, and that C. had been guilty of no laches so as to make the cheque his own.

In London, amongst bankers, payment, as we have already seen, ante p. 227, is made at the Clearing House,^{At Clearing House.}

Presentment
at Clearing
House.

Marked
Cheques.

Holder and
his Banker.

and it has been held that presentment for payment there is equivalent to presentment for payment at the bank. The Clearing House, it may be observed, is an institution of comparatively modern origin, and is established exclusively for the convenience of the London bankers, who meet there daily for the purpose of exchanging the cheques and other negotiable instruments they may hold upon each other, the final balance being struck and settled at five o'clock. If a cheque be received by the banker too late for presentment at the Clearing House, it is the custom to send it direct to the bank upon which it is drawn, and if it is to be honoured it is initialed or marked, priority in payment being given to it on the following day. The only effect of this marking is that it may perhaps be considered as a binding representation between bankers that the instrument will be paid.

The holder of a cheque is not entitled to an extra day in presentment, by passing the instrument through his banker instead of presenting it himself. *Alexander v. Burchfield*, 3 Scott, 555, where a cheque given by defendant to the plaintiffs on Tuesday was paid in by the latter on Wednesday to their bankers, who presented it on Thursday, but on which day the drawees stopped payment, and the instrument was returned unpaid. It was admitted in argument that if a cheque upon a banker living in the same place is presented the day after receipt it is presented within a reasonable time, but the plaintiffs contended that if the holder wished payment through his bankers he might pay it to them on the day after receipt, and that they had until the day after that to present it, or, in other words, that in such a case the holder has a day more for presenting the cheque than if he had presented it himself. No authority, however, was brought to support the position that the drawer was bound to bear the loss should the insolvency of the drawees take place subsequently to the time at which the holder would have been bound to present the cheque.

himself, and it was remarked by the Court in giving judgment that the only near illustrative case was "that of ^{Holder and his Banker.} Rickford *v.* Ridge [ante 380]. In that case the holder of a cheque had discounted it with a banker in the country, who sent it up to his London correspondents on the day following, who presented it the day after they received it; and in the meantime the party on whom it was drawn had become insolvent. But in that case the defendant, by discounting his cheque in the country, must be taken to have assented to that being done which was the usual and necessary course to procure payment of the cheque. All the other cases cited establish only that in the case of a bill of exchange there is one day more allowed for giving notice of dishonour of a bill when it is presented through a banker than if presented by the party himself; but no case establishes that any additional time for presenting the bill for payment is allowed under these circumstances. In the absence of evidence of a course of dealing for the drawer to pay a cheque under circumstances like those of the present case, from which, if it existed, a contract to pay might be inferred; and in the absence of authority to show that by law he is bound to pay, we cannot feel ourselves justified in laying it down as a rule of law that the holder of a cheque is entitled to one day more for presenting it by passing it through his banker." It was added, however, that the party receiving the cheque "may always protect himself against any danger from the insolvency of the drawee, where he intends the cheque to pass through his bankers, by stipulating that the bankers' names should be crossed upon the cheque, which would amount to an agreement on the part of the drawer of the cheque that the usual course of presentment through a banker should be observed."

If the drawee bank is the banker of the holder as well as of the drawer, no promise to pay will be implied by the banker receiving the cheque without remark, and keeping

Holder and
his Banker.

London
Agents.

Prolonged
Circulation.

it until the following day, for *primâ facie* he will be considered to have taken it as the agent of the holder. *Boyd v. Emmerson*, 2 A. and E., 184.

Presentment of a cheque to the drawee bank's London agents named on the cheque is insufficient, as the latter cannot be presumed to know the state of the drawer's account.

Of the prolonged circulation of the cheque it has been said that, "apart from those precautionary inquiries which mere prudence will suggest, there is no law to prevent the transfer of cheques at any time after the day they bear date; they are not, under any circumstances, subject to the law regarding overdue bills; and much less will the drawer himself, if he has issued the instrument a long time after the day of the date, be allowed to avail himself of any objection on that ground when sued by a bona fide holder for value." Chitty, 10th ed., 346, citing *Boehm v. Stirling*, ante 378, and *Brooks v. Mitchell*, 9 M. and W., 15.*

Cheques long out of date, or, as they have been called,

* And, in *Rothschild v. Corney*, 9 B. and C., 388, Littledale, J., said : "It has been urged, as matter of law, that a party taking a cheque overdue has it with the same title, and no other, as the person from whom he receives it. But, although the rule of law certainly is so with respect to bills of exchange and promissory notes, I think it cannot be applied to cheques."

In America, it has been held that, unless the drawer of a cheque actually suffers, such as by the intermediate failure of the drawee, by the delay in presentation for payment, he has no reason to complain of delay when not unreasonably protracted. And in Scotland, where the payee of a bank cheque paid it away to a party who did not present it till ten days after its date, the Court held both the drawer and the trustee for his creditors liable to recourse in respect of the funds having been withdrawn from the bank before the cheque was presented. *M'Gilchrist v. M'Arthur*, Morrison, 877. And this, unless there has been intervening fraud, is only just, as every cheque is presumed to be given for value received by the drawer, and he has no right to plead non-liability afterwards in consequence of delay in presentment when he has not suffered by such delay, for, if it were so, he would be thus, at the expense of the holder, a gainer, both of the original consideration and of the funds which should be reserved to meet the cheque. Unless actual loss result to him, the drawer would not appear to be discharged by any delay in presentment short of the six years fixed by the statute of limitations. In the case of *Alexander v. Burchfield*, in text supra, 382, it was observed by the Court that, with regard to the cheque, "the holder does not lose his remedy against the drawer by reason of non-presentment within any prescribed time after taking it, unless the insolvency of the party upon whom it is drawn has taken place in the interval—that is, unless there is an actual loss to the drawer." And see further, on the same point, the cases of *Serle v. Norton*, 2 Mood. and Rob., 401, and *Robinson v. Hawksford*, 15 L. J., Q. B. 377.

"stale" cheques, should not, particularly if presented several months after issue, be paid without reference to or fresh authority from the drawer. Upon this point, and as regards the position of the holder, it is thus observed in Moody and Robinson's Reports, vol. ii, page 404 n.: "Another reason for the bankers refusing to pay may be the staleness of the cheque, it being understood as a rule of business with regular bankers not to pay old cheques without inquiry. If, upon the bankers refusing on that ground to pay the cheque, the holder were to commence an action against the drawer, without giving him an opportunity of authorising his bankers still to pay the cheque, the plaintiff would probably fail, on the averment of due presentment of the cheque; and the non-presentment in due time might, under such circumstances, support the plea of payment of the original debt by the cheque; although the holder of a cheque who does not present it within a reasonable time is guilty of laches, the consequence of such laches may vary according to the circumstances of each case."

Of premature payment, where a cheque had been lost by the payee, and it was paid the day before its date by the banker, it was held, though no notice of the loss had been given, that such payment was invalid, and that the banker was bound to repay the amount to the loser, it being contrary to the usual course of business to pay drafts before the day on which they are dated. *Da Silva v. Fuller*, Sel. Ca. 238. Where payment was made under a misapprehension of facts, the banker was held entitled to recover from a holder who had wilfully concealed these facts. Thus, in *Martin v. Morgan*, 3 Moore, 635, 1 Gow, 123, where a holder of a cheque, knowing it to be post-dated, and also knowing the drawer to be insolvent, presented the instrument to the banker, who, without the knowledge of these circumstances, paid it, although he had not at the time funds of the drawer in his hands, it was decided that the holder was bound to refund.

Prolonged Circulation.

Premature Payment.

Forgery.

Fraud.

As it is the banker's duty to see that the cheque is in every respect authentic, and that no fraud is committed upon the funds of his constituent, it follows that, if he pays a cheque with the signature of the drawer forged, he alone must bear the loss; and also that, if the amount of the instrument be altered after issue in fraud of the drawer and paid, he cannot debit the drawer with the excess, unless the carelessness of the latter has facilitated the fraud. Of the banker's liability for loss in such a case see *Hall v. Fuller*, 5 B. and C., 750, 8 D. and R., 464, where great ingenuity had been displayed in altering the amount of a cheque from £3 to £200.* In *Young v. Grote*, 4 Bing., 253, the loss fell upon the drawer. In this case the instrument was originally for £50 2s. 3d. The fifty was commenced with a small letter, and so much space left in the line before the word as to admit of the introduction of "three hundred and." Sufficient space was also left between the amount in figures and the printed £ as to admit of the insertion "3." The cheque thus stood for £350 2s. 3d., and was so paid by the banker, who was held exonerated from loss on the ground of having been misled by want of proper caution on the part of the drawer.

* To protect the banker from alterations effected by the erasure or obliteration of the original writing, the use of paper coloured for the purpose and chemically porous is now pretty general, as any attempt to alter or erase the writing by chemical agency is at once detected from the effects upon the paper. And, as an additional protection in connection with other prepared cheques, there is also sometimes used a punching machine, to perforate the amount on the instrument.

There appears to be only one kind of ink, the "combined carbonaceous ink," really indelible in its nature, and which cannot be erased from ordinary paper; but, from its composition, this species of ink cannot be well used for general purposes. A new means of fraud, it may be added, has presented itself in the anastatic process of printing recently invented. By this kind of printing, bank notes, cheques, and other documents and writings can be so exactly copied or reproduced as to defy scrutiny, elaborate engraving or beauty of design affording in such a case no protection, but rather facility to the fraud. A safeguard to this, however, is offered in Glynn's patent paper, which not only prevents a copy of its contents being taken, but is itself destroyed when submitted to the process in question.

In further reference to improvements in paper, it may be mentioned that, by the application of asbestos, a fire-proof paper has been lately produced.

A difference between the written and figured amounts, or the sum as expressed in the body and corner of the cheque, is of frequent occurrence, and in such cases the general practice of the banker is to pay the lesser sum only. It will have been observed, however, with reference to bills, ante page 117, that in law the amount expressed in the body of the instrument is viewed as the sum payable when a difference exists between the two amounts.

If the holder's right be liable to suspicion, payment of the cheque should not be made by the banker. Thus, in the case of *Scholey v. Ramsbottom*, 2 Camp., 485, a cheque torn up into four pieces and thrown aside as useless, was afterwards pieced together and presented for payment by a person unknown. The instrument, though the rents were visible, was paid by the banker without inquiry, and it was held that he was not justified in making such payment, and that he could not take credit for the amount with his constituent.

If payment of a cheque be made after instructions from the drawer not to pay, the banker cannot debit the latter ^{Stopped Cheque.}

Payment should not be made by the banker after notice of loss. Nor after notice of the drawer's death, though a payment made in ignorance of the death is valid. *Tate v. Hilbert*, 2 Vesey, jun., 121. Nor must payment be made after notice of the drawer's bankruptcy.

When money has been deposited in the names of several persons not partners in trade, the banker, before paying, must see that all have signed the cheque, unless he has authority from all for one to draw. *Innes v. Stephenson*, 1 Moo. and Rob., 145; *Stone v. Marsh, R. and M.*, 369. In the event of the flight or absence of a joint account-holder, it is the practice of the Bank of England only to pay the other, or others, upon an order from the Lord Chancellor, equity thus lending its aid to help and relieve all concerned. And see ante page 48.

Married
Women.

Where a husband allows his wife to keep a separate account with bankers, he will be bound by her cheques to the extent of the funds deposited. Should she overdraw the account, however, the bankers could not sue the husband for repayment unless they could furnish evidence that the money had been borrowed by the wife with his sanction and authority. And in an account opened by a husband in his wife's name, or where a husband pays money into an account opened by his wife, the banker is justified in honouring the cheques of either upon the account, though in regular practice the withdrawals are made by the wife alone, such, indeed, being the intention when accounts are opened in her own name only.

Husband and
Wife.

If the account be opened in the joint names of husband and wife, and the former dies, the balance belongs to the wife if, as we have already seen, ante page 35, the money were deposited with the view of making provision for her in this way; but if not, and if the intention were merely for convenience in drawing, the money would not become her property. *Marshall v. Cruttwell*, L. R. 20, Eq. 328.

And vide ante pages 31 to 38, as to the position of a married woman generally, as well as in connection with her separate estate.

By statute, savings banks may trust married women as if they were unmarried, unless notice to the contrary be given by the husband.

Companies.

Of the drawing of cheques in connection with companies, in *Serrell v. The Derbyshire, Staffordshire, and Worcestershire Junction Railway Co.*, 11th June, 1850, 9 C. B., 811, three directors of the Railway Company, in fraud of the company, drew a cheque in favour of one of their body upon the company's bankers. This cheque, though bearing the stamp usually impressed upon documents issued by the company, and countersigned by the secretary, did not upon the face of it purport to be drawn on behalf of the company, nor did the drawers describe themselves therein

as directors. Held that the company were not liable for the amount to a bona fide holder for value. Companies.

The following was the form of the cheque, which was not under the common seal of the company:—

“London, August 13, 1847.

“Messrs. Hankey,

“Pay Daniel Turton Johnson, Esq., or bearer,
four hundred and twenty pounds.

“£420.

“J. M. MATHEW.

“W. KING.

“E. J. SPIERS.

“R. S. MACKENZIE,

“Secretary.”



Maule, J., in delivering judgment, said: “One question is, whether this document upon the face of it purports to be the cheque of the company. It seems to me that it does not. It does not purport to be drawn by the company in its corporate character. The persons by whom it is drawn are, in fact, directors of the company, but they do not describe themselves as such. There is no mention whatever of the company, except on the stamp. Looking at the instrument alone, it does not profess to be a document by which the company purport to direct the bankers to pay money on their account. The directors whose names appear upon it do order the bankers to pay the sum therein mentioned; but, without the aid of extrinsic evidence, we cannot construe the instrument as the cheque or order of the company. If I saw this document out of Court, I should be at a loss to know the meaning of the stamp. It is not a substitute for signature, like the cross of a marksman. It is not usual or customary to sign a document in this circular form. It looks rather (if one were obliged to construe it) as if this were a document which

Companies.

had passed through the office of the company on such a day, and received the stamp as a mode of identifying or ear-marking it, as is usual in some offices. But, looking at it without the aid of extrinsic evidence or conjecture, I am utterly unable to say that this document purports to be a document made by the company. Now, the evidence is, that all documents issued by the company had this stamp upon them. If so, it must intimate something different from what is suggested on the part of the plaintiff, for it must be put upon some documents that are required to be under the common seal of the company, and, therefore, cannot be intended to make it an instrument binding on the company. The other evidence, from which it is insisted that we are to infer that this was the cheque of the company, was, 'that cheques to the extent of fifty or sixty, drawn by three directors of the company, had been paid by the bankers on account of the company.' The form of these, and by whom signed, does not appear. Even if they were in the same form, and signed by the same three directors, and countersigned by the same secretary, I do not think it would make any difference. Because the company have sanctioned the payment of some cheques when satisfied of the honesty of the transaction, it by no means follows that they are bound by this confessedly dishonest and disgraceful transaction. Undoubtedly there are cases in which a principal may be bound by the acts of his agent, although he has exceeded or not properly followed his authority; but here, although the three directors who signed this cheque might have had authority to bind the company by contracts entered into on their behalf, they clearly had no authority to do what they have done here—viz., to cheat the company. Besides, the document does not purport to be made by any one, or by any set of persons, as agents for, or on behalf of, any one else. I, therefore, think the defendants are entitled to succeed upon the issue."

And Talfourd, J., in the course of his judgment, observed : "It is true, it is stated in the case that cheques drawn by three directors had been paid by the bankers on account of the company. But there is no statement as to what was the form of those cheques. And, supposing they were in the same form as the cheque in question, for anything that appears, those were cheques properly so called, and fairly drawn for the purposes of the company. This cheque, however, and those which were drawn at the same time, were not so drawn, but were drawn in fraud of the company, and to be paid out of future assets."

Although it is a general rule of universal law that the contracts of a lunatic, an idiot, or other person non compos mentis from age or infirmity, are void, yet in English law, should a lunatic draw a cheque, and the transaction be a fair one, he will be liable to any bona fide holder unaware of his lunacy. *Molton v. Camroux*, 18 L. J., Ex. 68.

Upon the death of a depositor, the amount standing in his name should not be paid to the executors or representatives by the banker unless they exhibit the probate of the will of the deceased, or, where there is no will, the letters of administration. In the case of several executors the office survives, and is transmitted ultimately to the executor of the surviving executor, unless he dies intestate. Though an administrator can do nothing until the letters of administration are issued, an executor is at liberty in some cases, as in paying and receiving debts, to act upon the will before he proves it, but he cannot, before probate, sustain actions or suits.*

* As to payment of money to an executor on production merely of the original will, the following case is furnished by a banker, in 14 Bank. M., 50 : "A customer of the bank died, having a considerable sum of money at the credit of his account. Very shortly after, a will of the deceased was presented at the bank by a solicitor of very doubtful respectability, by which the widow was appointed sole executrix, and in her name, and upon her written authority, the balance was demanded by the solicitor. The bank thought it prudent to request that a probate of the will might be first obtained and produced. The solicitor refused to do so, and threatened immediate proceedings if the money

Executors and
Administrators.

Branch Banks.

It may be added that wills disposing of property in the public funds must be proved in the Prerogative Court of the Archbishop of Canterbury, and, in cases of intestacy, letters of administration must be obtained in the same Court, as the Bank of England does not acknowledge any other probates or letters of administration.

Where a bank has branches, it very frequently happens that cheques on one branch of the bank are cashed at another branch, and it was formerly a question whether the amount of a cheque so cashed and returned dishonoured from the branch upon which it was drawn could be recovered from the holder who presented it for payment. Where the cheque had been so paid without condition or reservation, it was thought by some that the banker paying could not recover. Where the custom, however, was to pay the cheque conditionally, and on the responsibility of the holder, and such custom was acquiesced in, and was generally known in the place, then, under such

was withheld. The bank took the advice of its own solicitor, and persisted in requiring the probate. An action was then actually commenced by the solicitor of the widow, in her name. The bank took further legal advice, and were informed that if afterwards the widow, by the production of the probate, confirmed her right to the money, the suit would go against the bank, and thereby incur the loss of the expenses on both sides. The bank, under these circumstances, paid the depositor's balance to the solicitor, and also the costs of the action as far as it had proceeded. I shall be glad to hear that you think there was no necessity for such a course, but I fear all bankers are in the anomalous position I have described, and must either pay on the production of a will, running the risk of its being a good one, or run the other risk of the costs of an action-at-law, if commenced against them, on their refusal." It is thus observed, in answer : "It seems doubtful whether it would be any defence to a claim made by an executor before he proved the will to allege that the claim would have been settled if the will had been proved, and that the party was ready and willing to settle upon production of probate. But it is quite clear that, before the executor could take the case into Court, and, indeed, before he could safely take the step in the cause which succeeds the writ, and is technically called the declaration, he must be provided with the probate. The risk of costs (if any) in order to compel the production of the probate cannot, therefore, amount to any considerable sum. In Toller's Law of Executors, p. 47, the law is thus laid down : 'He (an executor) may commence actions in right of the testator as for trespass committed or goods taken, or on a contract made in the testator's life-time, although he cannot declare before probate, since in order to assert such claims in a Court of Justice he must produce the copy of the will, certified under seal, as above mentioned, or, as it is sometimes styled, the letters testamentary, but, when produced, they shall have relation to the time of suing out the writ.'"

circumstances, it was supposed that a court of law would not hesitate to hold the party who had obtained the money liable in the event of the return of the instrument. There was no direct case upon the point till that of *Woodland v. Fear*, 7 E. and B., 519, occurred, and which set at rest the whole matter. In this case the plaintiff sued as the public officer of Stuckey's Banking Company, which has branches at many of the principal towns in Somersetshire, among others, at Glastonbury and Bridgwater. One Helyar kept an account at the Glastonbury Branch, and paid defendant £39 by cheque on that branch on the 17th of the month. The defendant, who was known to the officers of the branch at Bridgwater, presented the cheque on the same day there and got cash for it. The cheque was sent by first post to the Glastonbury branch, where it was delivered in the course of the 18th. On the morning of that day Helyar had a balance there in his favour of £21, which had been drawn out before the cheque arrived, and the cheque was accordingly refused payment. The judge directed a verdict for the defendant, with leave to move to enter a verdict for the plaintiff for £39, the amount claimed. A rule nisi was obtained, and after argument in support of the rule it was held that the bank were entitled to recover, as the Bridgwater Branch could not, under the circumstances, be considered as honouring the cheque nor as purchasing it, but as taking it from defendant on his credit, as they might have done a cheque drawn on any other bank, the circumstance that the banks at Glastonbury and Bridgwater were branches of the same bank being for this purpose immaterial.

In delivering the judgment of the Court, Lord Campbell, C. J., said: "The action was for money had and received. It was not contended, in the argument before us on behalf of the defendant, that the transaction between the defendant and the establishment at Bridgwater could be considered a sale of the cheque outright; in which case the doctrine of

caveat emptor might have applied in the absence of fraud ; nor was it contended on the part of the plaintiff that if this were a case of a banker paying a stranger the cheque of his customer, supposing he had funds, and afterwards finding out that he had not, the banker could recover back the money, there being no fraud in the stranger. This was the case here as contended by the defendant. But the plaintiff insisted that, as regarded the separate customers, the different establishments were in the nature of separate companies ; that Helyar kept no account at Bridgwater, could draw no cheques on that establishment, and that he and it did not stand in the relation of banker and customer ; that the cheque in question, therefore, must be considered as having been cashed, not on Helyar's credit or by his agent, but on the credit of defendant ; and that, as there were no laches on the part of the Bridgwater establishment, the case was precisely within the authority of Timmins *v.* Gibbins, 18 Q. B., 722. It appears to us that this is the true view of the case : the cheque was not drawn on the Banking Company generally, but on the Banking Company at Glastonbury ; and this, coupled with the fact that Helyar kept his account and his balance only there, shews that the Bridgwater establishment was not bound to honour his cheque (even supposing he had assets at Glastonbury), as a banker, under the same circumstances as to assets, is bound to honour the cheque of his customer. To hold that the customer of one branch, keeping his cash and account there, has a right to have his cheques paid at all or any of the branches, is to suppose a state of circumstances so inconsistent with any safe dealing on the part of the banker that it cannot be presumed without direct evidence of such an agreement ; and the giving on the one hand, and accepting on the other, of a limited cheque-book seems intended to guard against such an inference. The case of Clode *v.* Bayley [ante p. 275], shews that the different branches of the same establishment may be indorsers from

one to the other, and, in case of dishonour, that notice need not be given direct to the principal establishment branch, ^{Branch Banks.} but that each branch in succession is entitled to notice. They are, therefore, for certain purposes distinct. If, then, Helyar is not to be taken to have drawn the cheque on the company simply, or on the Bridgwater Branch separately, and had no authority to draw on either, so as to enforce payment, we think the Bridgwater Branch cannot be properly considered to have paid the cheque as his bankers or on his credit ; and, if so, they must have paid it on the credit of the defendant, as much as if they had given him change for a bank note, both parties believing it to be genuine ; in which case, if it turned out to be forged and worthless, an action might clearly be maintained to recover back the money advanced. We therefore think the rule should be absolute."

Where an account-holder, however, has accounts at two or more branches the bank, unless there be an agreement to ^{Combining Accounts.} the contrary, is entitled to combine such accounts, and that even without notice to him. *Garnett v. Mc.Kewan*, L. R., 8 Ex., 10. But of course, if one of several accounts opened by an account-holder be a trust account, this cannot be combined with the others but must be kept separate, and in the event of the bankruptcy of the account-holder the balance to the credit of such an account belongs to the trust, and cannot be set off by the bank against any debt that may be due on the other accounts of the bankrupt. *In re Gross*, L. R., 6 Ch. App., 632.

And in the case of *in re Hallett's Estate*, Knatchbull and Cotterill *v. Hallett*, Court of Appeal, from Chancery Division, 26th November and 3rd December, 1879, and 11th February, 1880, it was decided that where sums held by a person in a fiduciary capacity are paid into his own banking account, and mixed with his own moneys, the persons entitled to such sums have a charge on such banking account for them. ^{Trust Moneys.}

Trust Moneys.

Trust moneys had been thus paid in by an account-holder without directions as to appropriation. He then drew out sums which, if appropriated to the payments in order of priority of entry, would have exhausted the trust funds; but he subsequently paid in other sums, leaving a balance sufficient to provide for the trust funds. Held, per Jessel, M. R., and Baggallay, L. J. (Thesiger, L. J., diss.), that the rule in Clayton's case did not apply, and that the drawer must be taken to have drawn against his own moneys, although they formed part of a mixed fund; so that the persons entitled to the trust moneys had a charge on the balance of the account. *Ex parte Dale & Co.*, 27 W. R., 815, L. R., 11 Ch. D., 772, and *Pennell v. Deffell*, 1 W. R., 239, 499, 4 De G. M. and G., 372, not followed.*

* In this very important decision of the Court of Appeal, overruling the decisions of judges of co-ordinate jurisdiction, it was observed by Jessel, M. R., that "the modern doctrine of equity as regards property disposed of by persons in a fiduciary position is a very clear and well-established doctrine. You can, if the sale was rightful, take the proceeds of the sale, if you can identify them. If the sale was wrongful, you can still take the proceeds of the sale, in a sense adopting the sale for the purpose of taking the proceeds, if you can identify them. There is no distinction, therefore, between a rightful and wrongful disposition of the property, so far as regards the right of the beneficial owner to follow the proceeds. But it very often happens that you cannot identify the proceeds. The proceeds may have been invested, together with money belonging to the person in a fiduciary position, in a purchase. He may have bought land with it, for instance, or he may have bought chattels with it. Now, what is the position of the beneficial owner as regards such purchases? I will, first of all, take his position when the purchase is clearly made with what I will call, for shortness, the trust money, although it is not confined, as I will show presently, to express trusts. In that case, according to the now well-established doctrine of equity, the beneficial owner has a right to elect either to take the property purchased or to hold it as a security for the amount of the trust money laid out in the purchase; or, as we generally express it, he is entitled at his election either to take the property or to have a charge on the property for the amount of the trust money. But in the second case, where a trustee has mixed the money with his own, there is this distinction, that the cestui que trust, or beneficial owner, can no longer elect to take the property, because it is no longer bought with the trust money simply and purely but with a mixed fund. He is, however, still entitled to a charge on the property purchased for the amount of the trust money laid out in the purchase, and that charge is quite independent of the fact of the amount laid out by the trustee. The moment you get a substantial portion of it furnished by the trustee, using the word 'trustee' in the sense I have mentioned, as including all persons in a fiduciary relation, the right to the charge follows. That is the modern doctrine of equity. I intentionally say modern doctrine, because it must not be forgotten that the rules of courts of equity are not, like the rules of the common law, supposed to have been established from time immemorial. It is perfectly well known that they have been established from time to time—altered, improved, and refined from time to time. In many cases we know the names of the

Although a banker need not in general concern himself from what sources sums are deposited with him, or how withdrawals are to be applied, yet if, in breach of trust, a cheque is drawn, and he is aware of such breach, he

chancellors who invented them. No doubt, they were invented for the purpose of securing the better administration of justice, but still they were invented. Take such things as these : the separate use of a married woman, the restraint on alienation, the modern rule against perpetuities, and the rules of equitable waste. We can name the chancellors who first invented them, and state the date when they were first introduced into equity jurisprudence ; and therefore, in cases of this kind, the older precedents in equity are of very little value. The doctrines are progressive, refined, and improved ; and if we want to know what the rules of equity are we must look of course rather to the more modern than the more ancient cases. First of all, what is the proper use of authorities ? This is almost elementary, but I am bound to state it, because, as I will show presently, that use has not been made in the case on which I am going to comment. The only use of authorities or decided cases is the establishment of some principle which the judge can follow out in deciding the case before him. There is, perhaps, nothing more important in our law than that great respect for the authority of decided cases which is shewn by our tribunals. Were it not for that our law would be in a most distressing state of uncertainty, and so strong has that been my view that where a case has decided a principle, although I myself do not concur in it, and although it has been only the decision of a tribunal of co-ordinate jurisdiction, I have felt bound to follow it where it is of respectable age, and has been used by lawyers as settling the law, leaving to the appellate court to say that case is wrongly decided, if the appellate court should think so." "Now," added the learned judge, after reviewing various cases, "we come to a case which, I am glad to say, is the last—the well-known case of *Taylor v. Plumer*, 3 M. and Selw., 562, where we have the decision of a great judge, no doubt, Lord Ellenborough ; and there he entirely throws over all the prior decisions as to money not ear-marked not being followed. At that time it was well known it could be ear-marked in equity, and therefore, when you come to look at it, you will find it an express decision in conflict with all the others cited as to the ear-marking of money. Lord Ellenborough says this : 'It makes no difference in reason or law into what other form different from the original the change may have been made—there I agree with him most cordially in reason and law—whether it be into that of promissory notes for the security of the money which was produced by the sale of the goods of the principal—as in *Scott v. Surman, Willes*, 400—and I say whether it be a simple contract debt or not it is the same thing, 'or into other merchandise, as in *Whitecomb v. Jacob*, 1 Salk., 161, for the product of or substitute for the original thing still follows the nature of the thing itself as long as it can be ascertained to be such.' That, if I may say so, is the law at the present moment ; and although I cannot say it always was law it always ought to have been law, because it is consonant with principle. Now comes the point, 'And the right only ceases when the means of ascertainment fail.' That is correct. Now there comes a point which is not correct, but which, I am afraid, only ceases to be correct because Lord Ellenborough's knowledge of the rules of equity was not commensurate with his knowledge of the rules of common law, 'which is the case when the subject is turned into money and mixed and confounded in a general mass of the same description.' He was not aware of the rule of equity which gave you a charge—that if you lent £1000 of your own and £1000 trust money on a bond for £2000, or on a mortgage for £2000, or on a promissory note for £2000, equity could follow it and create a charge ; but he gives that, not as law—the law is that it only fails when the means of ascertainment fail—he gives it as a case in which the means

Breach of
Trust.

Cancellation
by Mistake.

would be justified in refusing to pay the cheque. *Gray v. Johnston*, L. R. 3, House of Lords 1. And if he is aware that sums are lodged by depositors for an illegal purpose, he would be liable to be indicted, in conjunction with such depositors. *Reg. v. Pollman*, 2 Camp., 229.

Should a banker cancel a cheque by mistake, but return it with a memorandum to that effect, before the closing of the bank on the day of presentation, he will exempt himself from responsibility. *Fernandez v. Glynn*, 1 Camp., 426, where a cheque on a London banker being returned before

of ascertainment fail, not being aware of this refinement of equity by which the means of ascertainment still remain. With the exception of that one fact, which is rather a fact than a statement of law, the rest of the judgment is, in my opinion, admirable. It goes on : ‘The difficulty which arises in such a case is a difficulty of fact and not of law, and the dictum that money has no ear-mark must be understood in the same way, i.e., as predicated only of an undivided and undistinguishable mass of current money.’ There again, as I say, he did not know that equity would have followed the money, even if put into a bag or into an undistinguishable mass, by taking out the same quantity. Now I have finished the authorities cited by Mr. Justice Fry. Is there one of them (and I say there is not) which suggests there is any difference in the position of the factor and the position of the trustee as regards following money? So far from that being the case they all proceed on the ground that there is no distinction, and the only reason of the difficulty was that which was so lucidly expressed by Lord Ellenborough—the difficulty of ascertainment. I think, after those authorities, it must be considered settled that there is no distinction, and never was a distinction, between a person occupying one fiduciary position or another fiduciary position as to the right of the beneficial holder to follow the trust fund, and that those cases which have been cited at law, so far from establishing a distinction, establish the contrary; and that the mere error of supposing that equity could not follow or distinguish money in the cases supposed, if error it was, and perhaps it was not so originally (I am not sure that the doctrine of equity had got so far at the first start, but it was certainly an error at a later period), is attributable really to the fact that the judges who followed the earlier cases were not aware of what I may call the gradual refinement of the doctrine of equity.” And : “It is said, no doubt,” observed the learned judge in his subsequent judgment of 11th February, “that according to the modern theory of banking the deposit banker is a debtor for the money. So he is, and not a trustee in the strict sense of the word. At the same time one must recollect that the position of a deposit banker is different from that of an ordinary debtor. Still he is, for some purposes, a debtor; and it is said if a debt of this kind is paid by a banker, although the total balance is the amount owing by the banker, yet, considering the repayments and the sums paid in by the depositor, you attribute the first sum drawn out to the first sum put in. That was a rule first established by Sir William Grant in Clayton’s case; a very convenient rule, and I have nothing to say against it, unless there is evidence either of agreement to the contrary or of circumstances from which a contrary intention must be presumed; and then, of course, that which is a mere presumption of law gives way to those other considerations. Therefore it does appear to me there is nothing in the world laid down by Sir William Grant in Clayton’s case, or in the numerous cases which follow it, which, in the slightest degree, conflicts with the principle which I consider to be clearly established.”

five o'clock, cancelled with a memorandum written under it, "Cancelled by mistake," it was held that, notwithstanding the cancelling, the banker had, by the custom of London, until five o'clock to return the instrument, and, having so returned it, it amounted to a refusal to pay.

Cancellation
by Mistake.

If a banker, having adequate funds of an account-holder, dishonour a cheque of the latter which is legally drawn and presented within business hours, he is liable, though the refusal to pay may have resulted from mistake, to a special action on the case, and is at least liable to pay nominal damages, though there be no proof of actual damage sustained. *Marzetti v. Williams*, 1 B. and Ad., 415; *Whitaker v. Bank of England*, 1 Gale, 54. In the former case, Lord Tenterden said, in giving judgment: "The Attorney-General was compelled to admit, in this case, that if the action were founded on an express contract, the plaintiff would have been entitled to nominal damages, although no actual damage were proved. Now this action is, in fact, founded on a contract, for the banker does contract with his customer that he will pay cheques drawn by him, provided he, the banker, has money in his hands belonging to that customer." Besides the act of refusing to pay, a cheque is "particularly calculated to be injurious to a person in trade. My judgment in this case, however, proceeds on the ground that the action is founded on a contract between the plaintiff and the bankers; that the latter, whenever they should have money in their hands belonging to the plaintiff, or within a reasonable time after they should have received such money, would pay his cheques, and there having been a breach of such contract, the plaintiff is entitled to recover nominal damages." And Mr. Justice Parke observed: "It is admitted that where there is a breach of an express contract, nominal damages may be recovered. The only difference, however, between an express and implied contract is as to the mode of proof. An express contract is proved by direct evidence, an

Return by
Mistake.

Return by
Mistake.

implied contract by circumstantial evidence. Whether the contract be proved by evidence direct or circumstantial, the legal consequences resulting from the breach of it must be the same; one is, that wherever there is a breach of contract or any injury to the right arising out of that contract nominal damages are recoverable. An extreme case may be put, where a party who had sustained no inconvenience might bring an action, but the remedy in that case would be to deprive such party of costs."

In a subsequent case, *Rollin v. Steward*, 14 C. B., 595, tried at Norwich, the account-holder recovered substantial damages for the injury to his credit without proving actual loss.

When legally drawn and when made payable to the holder, and indorsed by him, or when not indorsed, if the receipt of it can be proved by other means, the cheque will be *prima facie* evidence of payment to that party. *Egg v. Barnett*, 3 Esp., 196; *Boswell v. Smith*, 6 C. and P., 60; *Mountford v. Harper*, 16 Law, J., Exch., 184. Such an instrument, however, is not of itself evidence of a debt. See previous cases generally, and *Cary v. Gerrish*, 4 Esp., 9, where it was held that a cheque without any other evidence did not, *per se*, prove a loan by the drawer to the payee. And see *Aubert v. Walsh*, 4 Taunt., 293, and *Graham v. Cox*, 2 C. and Kirw., 702.

Cheque as
Payment.

Evidence.

Tender.

As a tender, cheques, in common with country bank notes and post bills, are good if not objected to at the time. See *Wilby v. Warren*, Tidd's Practice, 187, n., 9th ed., and *Jones v. Arthur*, 8 Dow., P. C., 4 Jurist, 859. The common legal tenders, it may be observed, are Bank of England notes, payable to bearer on demand for sums exceeding £5, these, however, not being a legal tender at the bank or its branches, 3 and 4 Wm. IV, cap. 98, ante 114; the current gold coin; the current silver coin, if the sum does not exceed forty shillings; and the current copper or bronze coin not exceeding one shilling. The coins should not be

of less weight than the current weight, as defined by the Act 33 Vic., cap. 10. And the notes, though there is no enactment prohibiting their circulation in Scotland or Ireland, are not a legal tender in either of these countries. 8 and 9 Vic., caps. 37 and 38. Payment in forged notes, though made in good faith, is, of course, no payment in law; but where payment in spurious coin is made in good faith, and accepted without objection, the payment will hold good, unless the coin is traceable and discovery made within reasonable time.

We have seen, ante p. 247, that, as soon as the money is laid down on the telling desk to be taken by the receiver, the payment is deemed complete. The money after this act, although it was handed over under a misapprehension of the state of the drawer's account, cannot be taken back either forcibly or otherwise.

Under certain circumstances, as when a cheque has been given upon conditions which have not been fulfilled, the drawer is entitled to stop its payment; but if, under false pretences, or promises or conditions not fulfilled, another induces him to draw his cheque in favour of a third party, and it is delivered by the first mentioned to the third party, who receives it bona fide and for value, he acquires a good title, and the drawer remains liable on the instrument. *Watson v. Russell*, 31 L. J., 304.

On returning a cheque dishonoured for want of provision or funds, the banker should, of course, not state the amount deficient, but merely say, or note on the cheque generally, "not sufficient assets," or "refer to drawer." And it is hardly necessary to add that the utmost reticence should be observed by the banker in connection with all accounts, whether overdrawn or not, as he may be liable in damages for any indiscreet or unjustifiable disclosure.

Quoting a comparatively old case, that of *Goodbody v. Foster*, Camb. Sum. Ass. 1831, Lyndhurst, C. B., Byles Debiting Cheques. says that a banker should debit an account-holder not

from the date of the cheque, but from the time of payment. It has, however, from the first, been almost the universal practice of the country banker to charge the account-holder with interest from the date of the cheque, although debiting his account at the time of the actual payment of the instrument, it being considered that, as the bank's liability to pay on the cheque extends from its date, any benefit arising from delay in presentment on the part of the holder should accrue, not to the drawer, but to the bank. Many of the banks, however, do not take full advantage of the circumstance, charging only 3, 5, or 7 days on all cheques dated antecedent to these periods, however remote their dates may be.

Donatio Mortis Causâ. The cheque, it appears, is not a good *donatio mortis causâ*, and should, therefore, be delivered and cashed before death. *Tate v. Hilbert*, 2 Vesey, jun., 111, and see *Reddell v. Dobree*, 10 Simons, 244. In certain circumstances, however, a cheque may avail as a *donatio mortis causa*. *Rolls v. Pearce*, L. R., 5 Ch. D., 730, in which case a cheque, payable to order, was negotiated for value during the lifetime of the donor, and the holder was entitled to recourse against the latter's estate.

Where a cheque given by the drawer in contemplation of death was duly presented but not honoured, on account of variation in the signature, and the drawer died, and payment was subsequently refused on that ground, it was held that recovery could be had from the drawer's estate. *Bromley v. Brunton*, 6 L. R., Eq., 275.

The Act now regulating crossed cheques is the 39 and 40 Vic., cap. 81, 15th August, 1876, which repeals the previous Acts of 19 and 20 Vic., cap. 25, and 21 and 22 Vic., cap. 79. For a considerable period before the passing of the statutes, the crossing of cheques had very generally prevailed, the practice having originated in the Clearing House, in order to facilitate the making up of the accounts there.

The crossed cheque is now only payable through a banker. It may, as before, be crossed generally or specially by the drawer, or any lawful holder; but now, in either case, the drawer or holder may add the words "not negotiable," the effect of which is only to restrict the negotiation, in so far that a person taking such a cheque has not and cannot give a better title thereto than that of the person from whom he received the instrument.*

The crossing forms a material part of the cheque, and, if crossed more than once, must not be paid unless the second crossing is to an agent for collection.

The payee of a crossed cheque is now better protected, and is placed on almost the same footing in this respect as the drawer, as formerly it was held that, on indorsing in blank, the payee had no claim upon the drawee bank which paid the amount to a bank different from that named. *Smith v. Union Bank*, L. R. 10, Q. B. 291, a case which mainly led to the passing of the present Act.

The following, however, are the sections in detail of the Act, as it is of importance that a full knowledge of its provisions should be had:—

1. This Act may be cited as "The Crossed Cheque Act, 1876." Crossed Short Title.
2. The Acts described in the schedule to this Act are hereby repealed, but this repeal shall not affect any right, interest, or liability acquired or accrued before the passing of this Act. Repeal of Acts.

* The Act, says Byles, 13 ed., 26, "introduces 'not negotiable' cheques—that is to say, instruments which are freely negotiable, but to which a bona fide holder for value does not acquire a new and independent title, but can only have such title as his transferrer had. This provision must greatly lessen, if it does not entirely remove, risk from theft or loss, as a thief or finder can have no title, and, therefore, cannot convey one."

So far, the "not negotiable" cheque has not been in much use, a subsequent party to whom it is offered naturally demurring, particularly if it has been through several hands, to take an instrument to which a restricted title is thus attachable.

Crossed
Cheque Act.
Interpreta-
tion.

General
Crossing.

Special
Crossing.

Crossing after
Issue.

Crossing
Material.

3. In this Act :

“Cheque” means a draft or order on a banker, payable to bearer or to order on demand, and includes a warrant for payment of dividend on stock sent by post by the Governor and Company of the Bank of England or of Ireland, under the authority of any Act of Parliament for the time being in force.

“Banker” includes persons, or a corporation, or company, acting as bankers.

4. Where a cheque bears across its face an addition of the words “and Company,” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, and either with or without the words “not negotiable,” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable,” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

5. Where a cheque is uncrossed, a lawful holder may cross it generally or specially.

Where a cheque is crossed generally, a lawful holder may cross it specially.

Where a cheque is crossed generally or specially, a lawful holder may add the words “not negotiable.”

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection.

6. A crossing authorised by this Act shall be deemed a material part of the cheque, and it shall not be lawful for any person to obliterate, or, except as authorised by this Act, to add to or alter the crossing.

7. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.
- Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection.
8. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.
9. Where the banker on whom a crossed cheque is drawn has in good faith, and without negligence, paid such cheque, if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects as they would respectively have been entitled to, and have been placed in, if the amount of the cheque had been paid to and received by the true owner thereof.
10. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same shall be crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
11. Where a cheque is presented for payment which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered, otherwise than as authorised by this Act, a

Crossed
Cheque Act.

Payment to
Banker only.

Crossed
specially,
more than
once.

Protection of
Banker and
Drawer where
Cheque
crossed
specially.

Liability of
Banker paying
contrary to
Act.

Relief of
Banker from
responsibility
in some cases.

Crossed
Cheque Act.
Relief of
Banker from
responsibility
in some cases.

Title of
Holder.

Acts
Repealed.

banker paying the cheque in good faith, and without negligence, shall not be responsible, or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been added to or altered, otherwise than as authorised by this Act, and of payment being made otherwise than to a banker, or the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker (as the case may be).

12. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

But a banker who has in good faith, and without negligence, received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

SCHEDULE.—ACTS REPEALED.

- 19 and 20 Vic., cap. 25.—An Act to amend the law relating to drafts on bankers.
- 21 and 22 Vic., cap. 79.—An Act to amend the law relating to cheques or drafts on bankers.*

* As originally introduced, in February, 1876, the Bill was in these terms:—

1. This Act may be cited as "The Crossed Cheques Act, 1876."
2. The Acts described in the schedule to this Act are hereby repealed, but this repeal shall not affect any right, interest, or liability acquired or accrued before the passing of this Act.
3. In this Act—
 "Cheque" means a draft or order on a banker payable to bearer or to order on demand.
 "Banker" includes persons or a corporation or company acting as bankers.

As to whether the time of presentation is affected by the crossing of the cheque, it was held, in *Boddington v. Schlenger*, 4 B. and Ad., 752, that the drawer, by crossing a cheque, did not compel the payee to present it a day sooner for payment. As between the banker whose name

- Crossed Cheques. Presentment.**
4. Where a cheque bears across its face an addition of two transverse lines, with the words "and Company," or any abbreviation thereof, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.
Where a cheque bears across its face an addition of the name of a banker, that addition shall be deemed to be a crossing, and the cheque shall be deemed to be crossed specially.
 5. Where a cheque is uncrossed a lawful holder may cross it, generally or specially.
Where a cheque is crossed generally, a lawful holder may cross it specially.
 6. A crossing authorised by this Act shall be deemed a material part of the cheque, and it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.
 7. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to or through a banker.
Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to or through the banker with whose name it is crossed.
 8. Where a cheque is presented for payment, which does not at the time of presentation plainly appear to be crossed, or to have had a crossing which has been obliterated, or which has been added to or altered otherwise than as authorised by this Act, a banker paying the cheque, in good faith and without negligence, shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to, or altered otherwise than as authorised by this Act, and of payment being made otherwise than to or through a banker, or the banker with whose name the cheque is or was crossed (as the case may be).
 9. A person taking a cheque crossed specially shall not have and shall not be capable of giving a better title to the cheque than the person from whom he took it had. But a banker to whom a cheque is crossed specially, and who has in good faith and without negligence received payment of such cheque for a customer, shall not, in case the title to the cheque prove defective, incur any liability to the true owner of the cheque by reason only of his having received such payment.

SCHEDULE.—ACTS REPEALED.

19 and 20 Vict., cap. 25.—An Act to amend the law relating to drafts on bankers.

21 and 22 Vict., cap. 79.—An Act to amend the law relating to cheques or drafts on bankers.

It underwent various changes in committees in both Houses until its third reading on the 14th of August following, when, after much discussion and further alterations and amendments, it was passed in its present shape. It is a measure of Lord Cairns, then Lord Chancellor, and when laid on the table of the Upper House another bill on the same subject, the work of a private member, Mr. Hubbard, was being promoted in the House of Commons. This Bill, however, was merely explanatory of the law, being intended to amend an Act which was passed amending a previous Act, and which, if it had been carried, would have spread the law of crossed cheques over three statutes, and been otherwise unsatisfactory as unduly restraining the negotiability of all crossed cheques. The terms of this Bill, which was withdrawn, were as follows:

Crossed
Cheques.

Presentment.

is crossed and his customer, however, it appears to have been the opinion of the Court in the above case that the banker is bound to present the cheque on the day he receives it, if in time for presentation. Parke, J., observed that "if the holder of a crossed cheque deliver it to his banker on the day he receives it, within a convenient time before the clearing hours, the banker is liable as between him and his customer for neglecting the usual practice, as he would for disobedience of a special direction to present it for payment on that day."*

"Whereas, doubts have arisen as to the interpretation to be placed on the Act of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-nine, viz., an Act to amend the law relating to cheques or drafts on bankers:—

"Be it therefore enacted by," etc.

"1. The Act of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-nine, is hereinafter referred to as the principal Act; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act.

"2. Any banker paying a cheque or draft crossed in the manner provided by the principal Act to any person or persons other than the banker with whose name such cheque shall be crossed, shall not, by such payment, discharge his liability to the payment of such cheque or draft according to the directions thereupon.

"3. Any person holding a cheque crossed in the manner provided by the principal Act, and whether for valuable consideration or not, shall not be deemed to have and shall not have any better title thereto than the person from whom he received it."

In the following year, June, 1877, Mr. Hubbard attempted to carry another Bill, the object of which was to extend to cheques crossed and payable "to order" the protection given by Lord Cairns' Act to cheques marked "not negotiable," but on a division the Bill was rejected by 175 to 66.

* "If," says Byles, 9th ed., 20, "the payee of the cheque pay it into his bankers living in the same place, that they may present it, the bankers may be as between their customer and the drawer still bound to present it on the day after it was originally issued. But as between their customer and themselves, they may be bound to present it earlier or justified in postponing the presentment later. *Boddington v. Schlencker* (*ubi sup.*); *Alexander v. Burchfield*, 1 Car. and M., 75; 3 Scott, N. R., 555; 7 M. and G., 1067, S. C.; *Hare v. Henty*, 30 L. J., C. P., 302." In which last case it was held that the banker was entitled to the full time for presentment as against his customer, "unless circumstances exist from which a contract or duty on the part of the banker to present earlier, or to defer presentment to a later period, can be inferred."

Of the general rule as to the presentment of cheques, "the result," says Tyndal, C. J., quoted by Byles, 19, "of the cases from *Rickford v. Ridge* to *Boddington v. Schlencker* is, that the party receiving a cheque has till the following day to present it, where there are the ordinary means of doing so." Formerly, as added by Byles, it was held that the cheque must be presented on the morning of the next day; it is now, however, firmly established that the holder has the whole of the banking hours of the next day within which to present it. *Pocklington v. Sylvester*, 1817, Chitty, 385; *Robson v. Bennett*, 2 Taunt., 388; *Rickford v. Ridge*, 2 Camp., 537. Government cheques on the Bank of England are not payable after three p.m. 4 and 5 Wm. IV, cap. 15, sec. 21.

In proper banking practice it is the rule of the banker to transmit crossed to his correspondent for payment all cheques on the same day that they are received, though in one or two instances among country bankers we have known a practice observed, and which cannot be too severely condemned, of withholding the transmission of cheques until the usual bill remittance days, sometimes occurring only once or twice in the week.

From the vast addition to the number of negotiable instruments caused by the general adoption of the cheque payable to order, and from the natural increase of bills occasioned by the expansion of commercial intercourse and the extension of business generally, it some years ago became a matter of necessity to effect a change in the mode of transmitting instruments for collection or payment, as the continuance of specially indorsing and signing these absorbed so much time daily as to very materially interfere with and impede more pressing and important business. The practice adopted by some of the country banks, of stamping across the face of the order cheque a direction for credit with their correspondents, instead of specially indorsing and signing each instrument, at last led to a general agreement amongst bankers to adopt and extend the system, and now it may be said to be the universal practice, not only in connection with cheques but bills and all other instruments remitted for collection, to use a special stamp, such as for the crossing of cheques, interest warrants, and the like :—

“ 31st December, 18 .

“ From the Provincial Bank,

“ For credit with

“ The London and Westminster Bank, Lothbury,”
or for the indorsing of bills :—

“ 31st December, 18 .

“ Remitted by the Provincial Bank,

“ For collection on their account,

“ To Bank of Scotland,”

Crossed
Cheques.

Presentment.

Change in
Remitting.

Remittance
Crossing.

Remittance
Crossing.

equivalent to a special crossing or indorsement and direction to the drawee bank or payer to pay only to the London and Westminster Bank, or other correspondent named, thus saving a vast deal of time and trouble not only to the remitting but to the receiving bank, as well as diminishing risk in transmission. By this means also the operations at the Clearing House have been much facilitated and the dispatch of business greatly accelerated.

Before leaving the subject of cheques it may be proper to note that the following points of practice should be observed in connection with these instruments :—

If drawn on a local bank or bank in the same town, and received too near closing time for collection, the client should always be informed that they are held over until next day at his risk, but it would be better to defer passing them until next day, getting the client to date the credit note accordingly.

Indorsements should be obtained in all cases where cheques are payable to "self" only, or to "self or order," or to "self," with "or order" or "or bearer" erased.

If the cheque be drawn in favour of another person specially, without negotiable words, as "Pay John Smith fifty pounds," the payee should be known before payment is made to him. If the cheque be presented by a bank the indorsement should be guaranteed by the latter before payment.

Placed to credit indorsements, should not be received, but should be returned for indorsement by the payees themselves, unless the indorsement is combined with a procuration one, as it sometimes is, thus :—

" Passed to credit of, and indorsed by authority for, A. B.,

" Per pro Bank.

" C. D., Manager."

Companies.

Cheques payable to the order of a private company, and indorsed by a limited company of similar name, such

Late for
Collection.

Indorsation.
Self.

Restricted.

Placed to
Credit.

indorsements being not at all uncommon in the case of concerns converted from private to joint-stock limited ones, should be returned as irregular. This is the more necessary, as the cheque may represent a payment to the old or private company, whose discharge should be obtained.

Cheques payable to a limited company should be officially indorsed; and, with regard to unlimited companies, as "The Twist Mill Company," the proper course is for one of the company to sign per pro, and add, after his signature, "partner."

"Per pro" should precede the principal's name, and not be put before that of the agent signing, as is sometimes done.

An indorsement "for," instead of "per pro," should be returned as irregular, as a cheque thus indorsed could not with safety be paid without evidence of authority. With "per pro," a procuration power to give a discharge is alleged, and this, as we have seen, is sufficient for the banker.

A company's dividend warrant, signed "per pro" of the payee, will be insufficient, unless the power of attorney or authority has been exhibited to or lodged with the company, and this is generally evinced by the introduction by the company of the name of the mandatory in the warrant.

Cheques presented drawn, payable to a number or order, should be returned as irregularly drawn. If the drawer wishes to substitute a number for the name of the payee he should use the bearer cheque, or convert "order" to "bearer," confirming the alteration by his initials, though we have seen order cheques, payable, say, to "No. 365, or order," and indorsed thus:—

" Per pro No. 365,

" J. SMITH,"

passed and paid by the bank upon which they were drawn.

Cheques drawn in favour of, say, "Messrs. Smith," should be indorsed "Smiths," and then the proper signature of the firm added.

Indorsement.
Companies.

Procuration.

Number.

Indefinite.

Indorsation.
Name and
Address.

If drawn in favour of a person, and his address or the name of the town in which he resides, be added, the indorsement of his name simply will be sufficient.

Order, Bearer.

If a bearer cheque be drawn payable to a person or order, and "bearer" be omitted to be erased, as is frequently the case, it should not be paid without the payee's indorsement.

Death.

In cases where the payee of an order cheque has died after it has been issued to him, and it is presented with an indorsement purporting to be by his executors or administrators, it should not be paid unless the manager is satisfied that the indorsers are the executors or administrators. If not satisfied, it should be returned for confirmation by the drawer.

In such cases of death, where a corporation are the drawers of the instrument, it is usual for their solicitor to send an intimation such as this to the bank:—

To the Provincial Bank.

Gentlemen,—Mr. A. B., in whose favour a cheque for £
has been drawn, is dead. Letters of administration to his widow, C. B., having been produced to me, the cheque may be paid on being presented, with Mrs. B.'s indorsement.

I am, etc.

Married
Women.

Cheques payable to a married woman, as thus, "Mrs. John Smith," should bear her usual signature, with the addition of "wife of John Smith," or "widow of John Smith," as the case may be.

If the instrument be drawn payable to, say, Mrs. Jane Smith, and it be indorsed by her husband with his name simply, or with the addition of "husband of Mrs. Jane Smith," it, in the absence of knowledge that it is not her separate property, should not be paid without her indorsement.

Joint Names.

A cheque payable in joint names should not be paid without the signature of each of the payees.

A cheque issued with the blank space before "or order" not filled up is an imperfect instrument, and should be returned with the answer, "Payee's name and indorsement wanting," or "Requires drawer's indorsement." Indorsation.
Blank, or
Order.

As a cheque issued payable to bearer, or a cheque payable to order, and indorsed in blank by the payee, and which thus becomes payable to bearer, cannot be afterwards restrained by a special indorsement, such indorsements may be disregarded, though, at the same time, it is to be borne in mind that a bearer cheque is indorsable in so far that, as decided in the case of Keene *v.* Beard, 8 C. B. R. N. S., 372, where a person indorses it *animo indorsandi*, and delivers it so indorsed to a third person, he renders himself liable to be sued upon the instrument as indorsee by any subsequent holder.* Bearer,
Cheque
specially
indorsed.

A cheque omitted to be indorsed by the payee, and whose signature cannot well be obtained, may be paid under a guarantee, such as the following, of the presenting banker indorsed on the instrument:— Omission.

"We hereby guarantee you against all loss arising from the absence of the payee's indorsement.

"Per pro The Bank,
"....., Manager."

If a cheque be indorsed indistinctly, the indorser should repeat his signature properly. Indistinct.

If the instrument be drawn in favour of, say, "John Smith, senior," the indorsement "John Smith" will be sufficient; but, if drawn in favour of "John Smith, junior," the indorsement should correspond. Variation.

* As observed by Byles, J., in the above case, "It is true that a man's name may, and very often is, written on the back of a cheque or bill without any idea of rendering himself liable as an indorser. Indeed, one of the best receipts is the placing on the back of the instrument the name of the person who has received payment of it. Such an entry of the name on the instrument is not an indorsement. So a man frequently puts his name on the back of a bank note. In all these cases the act of writing may or may not be an indorsement, according to circumstances." 8 C. B. R., 382.

Indorsement.
Variation.

If an indorsement varies by a single letter in the surname, or also in the Christian name, unless, as regards the latter, the variation be a palpable error, the cheque should be returned as irregularly indorsed.

Without Date. Should the cheque be undated, it should be returned as imperfect, and the blank should not be supplied, as is sometimes done, by the cashier or teller filling in the date when paid, or writing above the blank space, "Paid" The cheque, from prolonged circulation, may be in reality a "stale" one.

Drawer's
Signature.

If there be any doubt as to the genuineness of the drawer's signature, the cheque should be returned, with the answer, "Signature differs." In cases where the signature has varied, the signature book should be re-signed by the account-holder.

Signature by
Mark.

A signature by mark, in the bank, should be witnessed by two of the officers, excluding the cashier paying. A signature by mark, outside the bank, should be witnessed by a well-known person, such as the clergyman or medical attendant of the person signing by mark. The witness should also add his address.

Mutilation.

A mutilated cheque, or cheque cut in two, or torn in more than one place, should not be paid, unless presented with a satisfactory explanation. On returning it, the answer should be, "Mutilated cheque. Explanation required."

Alteration.

Alterations should be duly confirmed by the drawer, and if made in a material part, such as in the sum or date, should be signed instead of initialed. If the cheque be drawn by several members of a company or corporation, confirmation should be by all, and not by one alone, or, as is often the case, by the countersigning clerk or secretary only.

With reference to the sum, however, the practice is not unusual to pay an amount, altered from a larger to a lesser sum, without the confirmation of the drawer.

And of crossings, we have seen, in more than one

instance, a crossing cancelled by the drawer and "pay cash" substituted, and this he doubtlessly has the power to do before the instrument is issued.

Although the Inland Revenue authorities have announced their opinion that advice cheques are not chargeable with any stamp duty, the practice followed by the leading Banks is to adhibit stamps on all advice cheques debited to clients' accounts, not stamping those instruments when cash is brought to retire the acceptance, but merely using them as memoranda, for the purpose of giving the requisite details in the letter of advice to their correspondents.

Of the stamp duty as applicable to the cheques of societies, those of industrial and provident societies, unless such societies be registered under 15 and 16 Vic., cap. 31, were at one time exempt, 25 and 26 Vic., cap. 87; 30 and 31 Vic., cap. 117; but as these two statutes have been repealed in whole by sec. 4 of the 39 and 40 Vic., cap. 45, "An Act to consolidate and amend the laws relating to industrial and provident societies, 11th August, 1876," and which contains no provisions of exemption, it would seem that the cheques of all societies of this description are now subject to stamp duty.*

Friendly societies, by 10 Geo. IV, cap. 56; 18 and 19 Vic., cap. 63; and now by section 15 of the consolidating and amending Act of 38 and 39 Vic., cap. 60, 11th August, 1875, are exempt from the stamp duty.

* The section in question is in these terms:—

"The Acts set forth in the first schedule hereto shall be repealed from the commencement of this Act; but this repeal, or anything herein contained, shall not affect the past operation of the said Acts, or the force or operation, validity or invalidity, of anything done or suffered, or any bond or security given, right, title, obligation, or liability accrued, contract entered into, or proceedings taken, under any of the said Acts, or under the rules of any society registered or certified thereunder, before the commencement of this Act."

And the Acts repealed are:—

"25 and 26 Vic., cap. 87—An Act to consolidate and amend the laws relating to industrial and provident societies.

"30 and 31 Vic., cap. 117—An Act to amend the Industrial and Provident Societies Acts.

"34 and 35 Vic., cap. 80—An Act to explain and amend the law relating to industrial and provident societies."

Alteration.

Advice
Cheques, and
Stamp Duty.

Societies'
Cheques, and
Stamp Duty.

Industrial and
Provident.

Societies' Cheques and Stamp Duty. Building.

Transfer Cheques, and Stamp Duty.

Particulars of Payment.

Insufficiency of Funds.

And building societies, if formed under the Friendly Societies Acts, are exempt ; and in certain circumstances—if the cheques or orders be drawn “on any officer”—those formed under the 37 and 38 Vic., cap. 42, but not those formed under the Joint-Stock Companies Acts, or under the 6 and 7 Wm. IV, cap. 32, are likewise exempt.

Upon a client having more than one account, making a transfer from one to the other, this should be effected by stamped cheque.

On every cheque paid by the tellers or cashiers, particulars of the payment should be given ; and when the amount is not paid in cash, but is credited the payee's account with the bank, and his indorsement cannot, as from absence abroad, be obtained, it should be so stated on the back of the instrument, with the requisite confirmation of the manager. As a rule, the particulars of payment should appear on the front, instead of the back of the cheque.

A cheque exceeding the balance of the account should be returned, with the answer, “Insufficient funds,” and other cheques coming in within the balance should be paid.

There is more difficulty, however, if several cheques are received at the same time, and the amount of the whole exceed the balance. When the cheques are received from different sources by letter, there appear to be three courses followed in banking practice—the first, to honour the cheques in the order that the letters are opened ; the second, to select those that will most completely exhaust the balance ; and, the third, to return such as would be attended with least injury to the credit of the drawer, honouring the others within the balance.

If, however, all the cheques come from one source, the proper course is to return the whole. Recently, where the cheques of a drawer who had £165,000 to his credit with a London bank were presented together to the amount of £175,000, they were all returned. As was observed in

the account of the circumstance, if the cheques had been presented singly or in instalments, instead of together, as Insufficiency of Funds, they came from the Clearing House, the bank would have paid them as presented, and the default might perhaps have been avoided. Presented together, there seemed to have been no power of discretionary choice as to which cheques were to be paid until the account became over-drawn, and so all were returned together.

On the withdrawal of the balance of an account, there should be inserted in the cheque, immediately after the amount, "being balance of account." Withdrawal of Balance.

No attention should be paid to telegraphic orders purporting to come from constituents, involving the payment of money. And in cases of doubt as to whether a cheque on another branch or bank will be honoured, no telegraphic inquiry should be made, but the cheque should be forwarded direct, with a request that its fate be telegraphed on receipt. Telegrams.

PART V.

DEPOSIT RECEIPTS.

Application
Form.

When a deposit receipt is applied for, the applicant should fill up and sign the form in the book of application forms, these being in the following terms:—

The Provincial Bank,

Liverpool, 18 . . .

Wanted, a deposit receipt in favour of ,

of , for £ ,

By

.....

Bank of England Notes	£	:	:
Sovereigns	£	:	:
Half-sovereigns	„	:	:
Silver	„	:	:
Copper	„	:	:
Country notes	„	:	:
Cheques on the bank	„	:	:
Old deposit receipt	„	:	:
	£	:	:

On being filled up, the book will be passed to the writer of the receipts, these forms, 200 in one book, being as follows:—

(Counterfoil.)	The Provincial Bank,
Book No.	Liverpool, , 18 .
Register No.	Nos. —/—
Name	Received from.....
Address .....	.....
Amount .....	.....
Entd.	to be accounted for on demand.
	Impressed id. Stamp.
	For the Provincial Bank,, Manager.
£.....
Entd. ....	.....

On the receipt being duly completed and the counterfoil filled up, the two books should be handed to another officer for comparison, and then returned, the counterfoil having been initialled by the officer signing, to the teller or cashier, who, after likewise duly comparing, will hand the receipt to the applicant.

If the applicant is not the owner of the receipt, the latter should be requested to call and insert his signature in the book kept for the purpose.

If unable to write, the applicant will attach to the application form his mark, which will be witnessed by an officer, and on the back of the form, if the mark is made by the owner of the receipt, a note of any particulars which would assist in identifying him should be made.

In making the entries, the application form book will be used for the day book, and the deposit receipt book for the deposit register, the latter being checked on the following day from the day book.

When the receipt is in favour of two or more parties, there should be expressed, immediately after the names, "to be drawn by either (or, as the case may be, "any one of them"), or the survivor"—that is, if repayment be so desired.

Inaccuracy.

If the receipt be incorrectly drawn out in any material part it should not be altered, but a new receipt should be drawn, the spoiled one being preserved for recovery of the stamp duty.

Repayment.

Before repayment of the deposit receipt, the deposit register will, of course, be referred to, and also the application form book, in the event of the owner not being personally known.

On payment of either principal or interest, or of part of the principal, the receipt should be delivered up indorsed, and a new receipt granted for the amount remaining.

Marksman.

An indorsement by mark should be attested by a witness known to the bank, or be attested by two of the bank's officers.

Renewals.

Should a renewal be made without the owner's indorsement, that of the presenting party should be taken, and he should precede his signature with "renewal receipt granted"; but, of course, such renewals should be made in only very exceptional cases, and only when the new receipt is for a larger amount, except where the manager, on being satisfied of the respectability of the presenting party and of the regularity of the transaction, shall think proper to make a payment to the extent of the interest due upon the receipt.

The amount deposited should remain in for a month before interest accrues, and, in the case of a partial withdrawal before the expiry of that time, the balance should bear interest from the original date of the deposit, and a memorandum made to that effect on the new receipt.

If a receipt be renewed for a larger sum before expiry of the month, a memorandum that interest is due on the amount and from the date of the old receipt should be made upon the new receipt.

Payment of
Stamp Duty.

Except in cases where no interest is allowed, the cost of the stamp put upon the receipt for the purpose of legalising

the discharge should be retained from the depositor, and placed to the credit of stamp account.

If deposit receipts issued at the other branches be presented, they should not be paid without previous advice. They may, however, be received and forwarded for collection to the issuing branch.

The interest on deposit receipts should after calculation by one officer be checked by another, and be duly marked on the instrument and initialled by both officers, who should be held responsible for the accuracy of the calculation.

Of the form of the deposit receipt, this, it may be added, varies, some of the provincial banks drawing it with the addition, "to be accounted for, with the usual deposit rate of interest, on demand, or after 14 days' notice, at the option of the bank;" and others, "to be accounted for after 21 days' notice, with interest at per cent. per annum, if the principal shall have been in the bank three months," it being the understanding with the bank and its depositors that any money left shall not bear interest unless it has remained three months in the bank, though the period has now been reduced by most of the country banks to one month.

Receipts issued unstamped, with these stipulations or additions, have not been unusual since the passing of the 16 and 17 Vic., cap. 59, the exemption from stamp duty by that Act being in these terms: "Receipt given for money deposited in any bank, or in the hands of any banker, to be accounted for, whether with interest or not, provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for."

Under the previous law there was, by 55 Geo. III, cap. 184, a restriction against stipulations or agreements for interest, unless the instrument was stamped as a promissory note, and the receipt, moreover, required to be expressed, "to be accounted for on demand."

Presentation
of Deposit
Receipts
issued
elsewhere.

Interest.

Stipulations
as to Interest.

Stipulations
as to Interest.

The 16 and 17 Vic., cap. 59, was, with the exception of one or two sections, repealed by the Inland Revenue Repeal Act of 1870, the 33 and 34 Vic., cap. 99; and by the present Stamp Act of 1870, the exemption is in these terms: "Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for."

In consequence of this change in the exemption, it may be doubted whether a deposit receipt containing an agreement for interest is not now subject to the sixpenny agreement stamp duty.

Impressed
Stamp.

It may be added that, as the penny duty on the ordinary receipt given for £2 and upwards is exigible on the discharge of the deposit receipt, it is now the practice of most of the banks to issue the instrument with an impressed *1d.* stamp.

Precautions
on payment
of Receipt.

The deposit receipt is not transferable, nor should cheques be drawn against it, and, before payment, it should, of course, be duly indorsed by the owner. For greater protection, it should not be paid unless presented by the owner himself.

Some private banks act very loosely with this instrument, and allow cheques to be drawn against it, disputes often arising with the owner when some of the payments, from the hurry and pressure of business, are omitted to be indorsed. Trouble and delay, too, are often caused in the calculation of the interest when the balance due comes to be paid, or transferred to a new receipt, when that is necessary, from want of space for further indorsements.

Donatio
mortis causâ.

In the case of *Austin v. Mead*, in re Mead, Chan. Div., 19th, 21st, and 29th June, 1880, where a testator held a deposit receipt for £2,700, withdrawable on seven days' notice, he, two days before his death, filled up the form of a cheque on the back of the instrument for £500, as a gift to his wife, and, at the same time, gave notice of withdrawal

to the bank. When part of a deposit was withdrawn, it was the practice of the bank to give a new deposit receipt for the balance. The cheque was made payable to self or bearer. It was held by Fry, J., that the £500 did not pass by a *donatio mortis causâ*. He said that the gift of a deposit receipt with a view to an immediate gift, has been held to be a good *donatio mortis causâ*, but that a cheque delivered by a testator, but not payable in his lifetime, has been held not to be a good *donatio mortis causâ*, and to the last class this case belonged. The effect of the notice to withdraw was to set free the fund which the testator had deposited in the bank. On that fund he drew a cheque for £500, and, looking to the circumstances of the case, it was clear that it was his intention not to give the whole of the sum on deposit to his wife, but only to give her a portion of it through the withdrawal notice. That not having been done in the lifetime of the testator, there was, on the authority of *Beak v. Beak*, L. R. 13, Eq. 489, and *Hewitt v. Kaye*, L. R. 6, Eq. 198, no good *donatio mortis causâ*. With regard to two unindorsed bills of exchange payable to the testator or order, and which had been given shortly before to the wife, and neither of which matured until after the testator's death, his lordship held, following *Veal v. Veal*, 27 Beav., 303, that they passed by a valid *donatio mortis causâ*.

We have already seen, ante 402, that a donor's cheque unpresented before his death is not a good *donatio mortis causâ*. The cheque of a third party, however, would be a good *donatio mortis causâ*, and it has been held by several recent cases that notes and bills may be subjects of such donations, and the same has been held of policies of insurance and bonds and mortgages. But Byles states, 13th ed., 179, that the Courts lean against this sort of disposition, and he quotes Lord Eldon, who said: "Improvements in the law, or some things which have been considered improvements, have been lately proposed, and if, among

*Donatio
mortis causâ*.

Donatio
mortis causâ.

those things called improvements, this donatio mortis causâ was struck out of our law altogether, it would be quite as well." Duffield *v.* Elwes, 1 Bligh, 633, A.D. 1827; 7 Taunt, 221. Certificates of railway stock are not a good donatio mortis causâ. Moore *v.* Moore, 18 L. R., 474.

The donatio mortis causâ, it may be added, is a gift made by manual delivery, in anticipation of death. It is revocable so long as the donor lives; it may be made to his wife, is liable to his debts on a deficiency of assets, and is subject to legacy duty. The clearest evidence must be furnished to support this species of donation.

PART VI.

OPINIONS.

It need hardly be observed that the interchange of opinions now forms not the least important part of a banker's duty, though we recollect that at one time it was gravely debated whether any attention should be paid to status inquiries at all. In this respect the only doubt now is in connection with those made by others than a banker, though when such inquiries emanate from known firms, and refer to parties of undoubted stability, there might not perhaps be much hesitation in giving, under cautious terms, of course, the necessary information, particularly after what fell from the judges in the case of *Swift v. Winterbotham*, 17th February, 1873. In their judgment in that case the Court of Queen's Bench, to which appeal had been made, said : "It was further proved in evidence that the usual way for customers of a bank to make inquiries of this description is through the bank, bankers uniformly refusing to answer inquiries made by private individuals, strangers to the bank from which the information is sought, and only answering those made by other bankers ; while it is notorious amongst bankers that such inquiries are constantly made on behalf of customers. We think, therefore, that it must be intended that the answers to such inquiries would be sent not merely for the use or benefit of the bank making the inquiry, but for the use and benefit of the customer on whose behalf the

False Representation.

inquiry is made ; and we think it must be taken in this case that the jury have so found. These facts, we think, bring the present case within the law as laid down in *Langridge v. Levy*, 2 M. and W., 519, as it must be considered that it was within the contemplation of the defendants, when the representation was made, that it would or might be communicated to the customer of the bank on whose behalf the information was sought ; and when that is so, and the person to whom the false representation is thus communicated acts on it and suffers damage thereby, he is entitled to maintain an action for such damage in the same manner as if the representation had been made directly to himself. It is now well established that, in order to enable a person injured by a false representation to sue for damages, it is not necessary that the representation should be made to the plaintiff directly, it is sufficient if the representation is made to a third person to be communicated to the plaintiff, or to be communicated to a class of persons of whom the plaintiff is one, or even if it is made to the public generally with a view to its being acted on, and the plaintiff, as one of the public, acts on it and suffers damage thereby. We think that the law on this subject is correctly stated by Pollock, C. B., in *Bedford v. Bagshaw*, 29 Law J., Ex., 65, as follows : ‘Generally, a false and fraudulent statement must be made with a view to deceive the party who makes the complaint, or, at all events, to deceive the class to whom he may be supposed to belong, although he may not be individually and particularly intended. There must always be evidence that the person charged with the false statement and the fraudulent conduct had in his contemplation the individual making the complaint, or, at all events, that the individual making the complaint must have been one of those whom he ought to have been aware he was injuring or might injure by what he was doing.’ In the present case it has been proved to be the usage amongst bankers to make inquiries of this kind on behalf of their customers,

and we think, therefore, that when the manager of the Gloucestershire Bank, Cheltenham, wrote the opinion, he must necessarily be considered to have known and contemplated that it could or might be communicated to the customer of the Sheffield Bank on whose behalf the information was sought, and we are therefore of opinion that under these circumstances the customer, though not individually known to the manager of the Gloucestershire Bank, the representation having been communicated to and acted upon by him, and he having been injured thereby, may sue upon it. It must, however, be understood that our judgment is confined to the case before us, namely, the case of the customer at whose request the inquiry was actually made, and that it is not intended to apply to any other customer to whom the bank may have subsequently communicated the contents of the letter."

The banker would, particularly with regard to his bills, be acting completely in the dark did he not keep himself duly informed of the position of the parties to them, and no matter from whom they may be received, he should have ample information respecting all the names with which he may not be familiar; and in the rigid observance of this rule amongst the profession there would be the best means secured for mutual protection against imposition and dishonest trading, while, at the same time, the purity and true interests of commerce would be subserved and advanced.

Where it is necessary to institute inquiries daily it is customary for the banker to have an inquiry book, each page having a triple division, the middle, within perforated lines, being used as the letter of inquiry. The counterfoil, or left part of the page, contains the date, the number, the name of the bank or party addressed, the name and address of the party inquired about, the name of the client from whom the bill is received or on whose account the inquiry is made, and the amount. The third or right division of

False Representation.

Importance of
interchange
of Opinions.

Inquiry Book.

Inquiry Book.

the page bears at the top the bank's address, the number and the initials of the party inquired about, and it accompanies the letter of inquiry, and should be returned to the bank filled up with the information requested. It is then attached to the counterfoil, and the Opinion Book is duly written up from the united parts. The following may be offered as an illustration :—

Forms.

	14th August, 1879.	Provincial Bank, Liverpool,	To the Provincial Bank, Liverpool.
	No. 10/1195.	14th August, 1879.	No. 10/1195.
	To The Newcastle Bank, Newcastle-on-Tyne.	To the Newcastle Bank, Newcastle-on-Tyne.	J. S. & Co.
Jasper Shorthose and Co., smallware merchants, Newcastle-on-Tyne.	o/a	Dear Sirs,— We beg the favour, upon the annexed, of your confidential opinion of the character and position of the under- mentioned, and whether reliable, in the course of business, for £75/150:	Newcastle Bank, Newcastle-on-Tyne, 15th Aug., 1879.
Twist, Challis, & Co.	£75/150.	Jasper Shorthose & Co., smallware merchants in your town.	Dear Sirs,— They made over all their effects to their creditors some six or seven years ago.
		Yours faithfully, Per pro. the Provincial Bank, A. B., Manager.	J. S., thereafter the only partner, has ever since kept a small account with us. The acceptances rarely exceed £50 or £60, and, as a rule, are regularly provided for, though occasionally taken up with noting. We consider him to be a very respectable, steady, industrious young man, with an improving business but limited means, and your first mentioned amount would at present be the preferable credit.
			This is given in confidence for your private use, and without any responsibility on our part.
			Yours truly, Per pro. the Newcastle Bank, C. D., Manager.

Or, where several names are given to the same bank :—

Forms.

14th August, 1879.

To the Glasgow Bank, Glasgow.

No. 10/1196.

Swindlecote Smelting Company Limited,
..... Road, o/a A. B., £3,000.

1197. The Clyde Iron and Wire Company
Limited, o/a A. B., £20,000 or
£30,000.

8. Donald Mc.Kenzie,
... Street, to C. D., £80
or £100.

9. Cameron and Company,
..... Street, to C. D., £3,000.

1200. James Kennedy,
..... Square, to C. D., £500
or £600.

1. Ronald Mc.Donald,
..... Terrace, o/a C. D., £200
or £300.

2. G. and K. Mackay & Co.,
..... Court, to C. D., £400
or £500.

3. J. Robinson,
..... Street, o/a E. F., £100.

4. N. Macleod,
..... Street, to E. F., £300
or £400.

5. John Smith,
..... Road, o/a E. F., £50.

6. Alexander Macpherson,
..... Square, o/a E. F., £60
or £70.

7. Methven and Mc.Lean,
..... Street, to G. H., £1,000.

8. William Henderson,
..... Square, o/a G. H.,
£1,500.

9. C. F. Somerville,
..... Square, o/a G. H.,
£1,000 or £1,200.

1210. Macgregor, Macintosh, & Co.,
..... Street, o/a G. H.,
£2,000.

1. Stewart, Sons, & Co.,
..... Street, to G. H., £10,000
or £15,000.

Provincial Bank, Liverpool,

14th Aug., 1879.

To the Glasgow Bank, Glasgow.

Dear Sirs,—We beg the favour
of your confidential opinion of the
character and position of the under-
mentioned, and whether reliable,
in the course of business, for the
respective amounts against their
names.

[Then follow the numbers, names,
addresses, and amounts, as on
counterfoil.]

Yours faithfully,
Per pro. the Provincial Bank,
A. B., Manager.

The reply will be received on the Glasgow Bank's folios, which can be attached to the counterfoil:—

Glasgow Bank,

Glasgow, 19th August, 1879.

To the Provincial Bank, Liverpool.

Dear Sirs,

- 10/1196. S. S. Co. Limited.—This company was established about eighteen months ago with a capital of £50,000 in 5,000 shares of £10 each. The shareholders are numerous. The management appears to us to be defective, and as the shares are fully paid up, and the concern accepts freely, we would be inclined to advise great caution in any dealings with it.
- 10/1197. C. I. and W. Co. Limited.—A most respectably constituted company. It was formed some ten or twelve years ago, with a capital of £200,000 in £100 shares, the half of which is uncalled. The proprietary is not numerous but very substantial, and the management is in excellent hands. Besides the large amount of unpaid capital there is an ample reserve fund, and we think that for all its engagements the company may be perfectly relied upon. Its practice has been to accept only on rare occasions. Its account has been conducted to our entire satisfaction, and the balance is often largely to the credit.
- 10/1198. D. McK.—A respectable, honest, hard-working man, but somewhat short of means. He operates with us under a guarantee which he generally uses. Your amount, however, would appear to be a fair trade credit for him.
- 10/1199. C. and Co.—Make use of all their resources in their business, which is a considerable one. We never see their name for so large a sum in a single

transaction as you mention, but in a series of transactions we should consider them responsible for your amount.

10/1200. J. K.—Was unsuccessful some eight or ten years ago, but, from the course of his account, appears now to have redeemed his position. We should think him right for a trade reliance of £100 or £200, but for £500 or £600 should look also to a good indorser.

10/1201. R. McD.—His position has improved since he opened his account with us, and we think him fairly entitled to a trade credit of £200 or £300.

10/1202. G. and K. McK. and Co.—Very respectable, have a fair capital, and readily obtain credit to the extent of £400 or £500 in the way of business.

10/1203. J. R.—We regret we are unable to obtain any definite information respecting this person. We shall be happy to pursue our inquiries if you can furnish us with a reference, which, we would suggest, should be required before any dealings are undertaken.

10/1204. N. M.—We should still think him sufficient for £300 or £400. He is not known to be affected to any extent by his brother's failure.

10/1205. J. S.—Not to be trusted without security.

10/1206. A. McP.—Is very prudent and careful, and attentive to his business. Has had a small account with us for some time, and it has always been maintained to the credit. Never having applied to us for any advance we cannot speak with accuracy as to his resources, but from what we know and have seen of him we should think him not unworthy of credit in the course of his trade to the extent you name, £60 or £70.

Forms.

- 10/1207.** M. & McL.—We have no reason for altering the opinion we gave eighteen months ago respecting their responsibility for £1,000, and we indeed consider them safe for any engagements they are likely to form in the course of their business.
- 10/1208.** W. H.—Was most respectably introduced to us about a year ago. His means are fair; he keeps a very regular account with us, and we know he is freely trusted by the trade, but still we think the amount you mention rather high without an additional good name.
- 10/1209.** C. F. S.—Keeps a small creditor account with us. Your figures, £1,000/1,200, are so very much larger than any that we are accustomed to see in connection with his name that we should be glad to have information as to the occasion of your inquiry, if you are in a position to acquaint us. £100 or £150 would be nearer the mark for him.
- 10/1210.** McG., McL., & Co.—Have kept a fair credit account with us for some years, but their transactions do not indicate so large an amount as you give. We think, however, that the firm would not undertake any engagements they could not fulfil.
- 10/1211.** S., S., & Co.—Of very good position. Keep to their legitimate business, and, with a variety of drawers, your amount of £10,000 or £15,000 would not be an unreasonable risk.

All this information is given as strictly confidential, and on the express understanding that it shall not in any way prejudice us.

Yours truly,

Per pro The Glasgow Bank,

C. D., Manager.

Where the inquiries affect many large firms of the metropolis or chief towns, and a knowledge of the limit to which they may be individually trusted in the course of business is wanted, it is usual, in the list furnished, to afford the information shortly by numbers only against the names, each number signifying a particular amount, thus:—

No. 1 may indicate "perfectly safe for all engagements, or any amount."

No. 2, good for £30,000 on sole name.

No. 3, " £20,000 " "

No. 4, " £10,000 " "

No. 5, " £3,000/5,000 " "

and No. 6, " £1,000 " "

When two numbers are quoted, the responsibility will be for one-half of the combined amount.

The form of inquiry we have prepared above enables variations in the request to be easily made at the end, as, in addition to the example furnished, *whether reliable in the course of business for "£500 in one transaction," or "£1,000 at 3 ms./d.,"* or *"£5,000 in a series of transactions current at one time,"* or *whether reliable "as a surety for £1,500,"* or *"to execute conscientiously orders entrusted to them in the course of their business."*

As a rule, the branch manager should make inquiry through head office, who may be already in possession of the necessary information, but, should he have occasion to inquire direct, the reply should always be duly communicated to head office. At stated periods, the intervals depending a good deal on circumstances, renewal inquiries should be made, so that the information may be well kept up.

Course at
Branch.

If the branch manager finds that any one in his locality is being trusted to an unwarrantable amount by constituents of the bank at other localities, information of the circumstance should be at once forwarded to head office.

Precautions.

In conveying an opinion to a constituent, it is best to do so verbally. If by writing, plain paper should be used and no signature adhibited, and, as verbally, merely the substance of the opinion should be given, and that from the banker's point of view, as in many cases, if the full opinion were imparted, the constituent might regard it in too sanguine or favourable a light.

In the usual opinions emanating from the branch manager himself, he will, of course, be very guarded, and his communication should be headed, "Strictly confidential, for private use only, and without responsibility," and he should always sign per procuration of the bank.

PART VII.

USANCE AND THE OLD AND NEW STYLES OF COMPUTING TIME.

Usance, from the French word of that name, is the space ^{Usance.} of time which, by usage or custom, is allowed for payment of the bill between different countries or places.

The period included under this term varies from fourteen days to three months, as in the manner seen in the following series of tables.

In calculating the usance, the day of the date of the bill ^{Computation.} is not included, neither are the days of grace where such occur. When the usance comprises a month, and a half usance is expressed, it is always understood to be fifteen days, whatever number of days there may be in the month.*

Bills are sometimes drawn at double or treble usance, which is, of course, double or treble the accustomed time.

The number of days of grace allowed before payment of a bill varies in different countries, but in all the period is now computed independently both of the usance and of the day on which the bill falls due.

In introducing the following tables, it may perhaps be necessary to observe that the periods embraced are those ^{Change in Practice.}

* One author, Pardessus, No. 251, maintains that the half usance should consist of sixteen days, in order that the acceptor may have the benefit of the thirty-first day. The practice observed, however, is as stated in the text.

Change in
Practice.

which, we believe, will be found consistent with correct practice. The periods which are obsolete, or now deemed inaccurate, will be found in the relative foot notes, though it may be added that the custom is now becoming much more general here, and also abroad, of drawing the bill at a fixed time after date or sight, instead of at usance. And this course is certainly advisable, both from the uncertainty which exists, in many instances, as to the exact duration of the usance, and from the fact that our courts do not take judicial notice of usances, but require the length of time to be averred and proved. The incidents of trade also, and the changes in international communication, now render it the more necessary to have varying currencies of fixed times or known duration.

Of bills drawn on England, the usance is, from—

Tables.
Bills on
England.

Alexandria, Egypt	3 months after date.
America, North, generally	60 days after sight.
America, South, generally	90 days after sight.
Austria	1 month after date.
Belgium	1 month after date.
Constantinople	31 days after sight.
Denmark.....	1 month after date.
France.....	30 days after date.*
Geneva	30 days after date.
Germany.....	1 month after date.
Holland, or the Netherlands.....	1 month after date.†
Italy, States of	3 months after date.
Malta	30 days after date.
Norway	75 days after date.
Portugal	2 months after date.
Prussia.....	1 month after date.
Spain, generally.....	2 months after date.
Sweden	75 days after date.

* In Freese's Camb. Comp. it is stated that the usance between Paris and England is 60 days after date.

† Three months after date, by some authors.

And, in addition, there are the three days of grace allowed in this country.

Tables.
Bills from
England.

The usance of bills drawn from England is, on—

	USANCE.	Days of grace.
Aleppo	I month after date, with	8
Altona.....	I month after date	none ¹
Amsterdam.....	I month after date	none ²
Antwerp	I month after date	none ²
Augsburg	15 days after sight ³	none ⁴
Bahia	90 days after sight	6 & 15
Barcelona	2 months after date.....	none ⁶
Berlin	I month after date ⁷	none ⁸
Bilbao	2 months after date.....	none ⁶
Bordeaux	30 days after date ⁹	none ¹⁰
Brabant	I month after date	none
Bremen	I month after date	none ¹¹
Bruges.....	I month after date	none
Brussels :.....	I month after date	none
Buenos Ayres.....	90 days after sight	6
Cadiz	2 months after date ⁵ ...	none ²
Cartagena	2 months after date.....	none ⁶
Cologne	I month after date	none ²
Constantinople	31 days after sight	—
Cork	21 days after sight	3
Danzig.....	14 days after acceptance	none ¹²
Dublin.....	21 days after sight	3

¹ Formerly twelve in number.

² Formerly six.

³ Half usance, eight days ; one and a half usance, twenty-three days.

⁴ Formerly five.

⁵ Some authors state sixty days after sight, and others sixty days after date.

⁶ Formerly fourteen.

⁷ Two months after date, and fourteen days after acceptance, according to some authors.

⁸ Formerly three.

⁹ Some authors state thirty days from acceptance, and others one month after date.

¹⁰ Formerly ten. And see n. 25.

¹¹ Formerly eight.

¹² Formerly ten.

Days of grace.

Tables.
Bills from
England.

Edinburgh	21 days after sight	3
Erfurt	1 month after date	none
Florence	30 days after date	none
Frankfurt-on-the-Main.	14 days after acceptance	none ¹³
Frankfurt-on-the-Oder.	2 months after date.....	none
Glaris	1 month after date	3
Geneva	30 days after date	1 ¹⁶
Genoa	3 month after date ¹⁴ ...	none ¹⁵
Gibraltar.....	2 months after date.....	14
Gottenburgh	75 days after date	none ¹⁹
Hague.....	1 month after date	none
Hamburgh	1 month after date	none ¹⁷
Leghorn	3 months after date.....	none ¹⁸
Leipsic	14 days after acceptance	none ¹⁹
Lisbon.....	2 months after date ²⁰ ...	none ¹⁹
Lisle	30 days after date ²¹ ...	none ²⁵
Lucca	3 months after date.....	none
Madrid	60 days after date ²² ...	none ²³
Malaga	2 months after date.....	none ²³
Malta	30 days after date	13
Middelburg.....	1 month after date	none ¹⁹
Milan	3 months after date.....	none
Naples.....	3 months after date.....	none ²⁴
New York	60 days after sight	3
Nürnberg	1 month after date	none ¹⁹
Oporto.....	2 months after date ²⁰ ...	none ¹⁹
Palermo	3 months after date.....	none

¹³ Formerly four days out of the fair time.¹⁴ Two months after date, according to Molloy.¹⁵ Formerly thirty.¹⁶ Formerly five.¹⁷ Formerly twelve, the day on which the bill fell due, making one of the days of grace.¹⁸ Formerly ten days.¹⁹ Formerly six.²⁰ Fifteen days after sight, according to some authors, and thirty days after sight and sixty days after date, according to others.²¹ Some authors state one month after date. And see ante *436.²² Two months after date by some authors, and sixty days after sight by others.²³ Formerly fourteen days.²⁴ Formerly eight days.

		Days of grace.	
Paris	30 days after date ²¹ ...	none ²⁵	
Rio de Janeiro	90 days after sight	6 & 15	Tables. Bills from
Rome	3 months after date.....	none ²⁶	England.
Rotterdam	1 month after date	none ¹⁹	
Rouen	30 days after date ²¹ ...	none ²⁵	
St Gall, Switzerland ...	1 month after date ³⁰ ...	6 ²⁷	
St. Petersburgh	none	3 & 10 ²⁸	
Seville	60 days after date	none ²³	
Smyrna	31 days after sight	—	
Stockholm	75 days after date	none ²⁹	
Trieste.....	14 days after acceptance	none ³¹	
Venice.....	3 months after date.....	6 ³²	
Vienna	14 days after acceptance	none ³¹	
Zante	3 months after date.....	none	
Zealand	1 month after date	none*	

²⁵ Throughout France formerly ten, and none if payable à vue. Bills payable in France at a great public fête are due the day before; and those payable at the fair are due the day previous to its termination.

²⁶ Formerly fifteen days.

²⁷ No days of grace upon bills payable at sight, or at fairs.

²⁸ The days of grace—of which the banks, however, do not avail themselves—are three for bills payable at sight, and ten for bills payable after date, or at a fixed time. There are no days of grace on unaccepted bills. Bills payable at the fair are, as in France, due the day previous to its termination.

²⁹ Formerly six and twelve days.

³⁰ In Switzerland, for the most part, said by some authors to be thirty days after sight, with, generally, no days of grace.

³¹ Formerly three days on bills drawn after date, or any term after sight not less than seven days, or payable on a particular day. Sundays and holidays were included in the days of grace, and, if the last day of grace fell on such a day, payment required to be made, or the bill protested, on the first following open day. Ordinances of 1763, 1765, and 1822.

³² Sundays, holidays, and days on which the bank is shut, not included.

*In Chitty, 10th ed., 255, it is stated that the usance between London and Brazil is

Brazil	is	None.
Berlin ,,	.....	14 days after sight.
Buenos Ayres is		None.
Constantinople ,,	.....	31 days after date.
Lisbon is		60 days ,
Lisle ,,	.....	1 month ,
Oporto ,,	.....	60 days ,
Paris ,,	.....	1 month ,
Rouen ,,	.....	1 month ,
Smyrna ,,	.....	31 days ,
Spain, excepting Cadiz, is		60 days ,
Switzerland is		30 days after sight.

Tables.
Bills from
England.

The usance generally, and with the exceptions above noted, of bills drawn from England on the following countries, is, on—

America, North...60 days after sight, with 3 days of grace.
America, South...90 days after sight, and 6 and 15 days of grace.

Austria 1 month after date, and no days of grace.

Belgium..... 1 month after date, and no days of grace.

Denmark 1 month after date, and no days of grace.

France 30 days after date, and no days of grace.

Germany 1 month after date, and no days of grace.

Holland, or the {
Netherlands ..} 1 month after date, and no days of grace.

Hungary 1 month after date, and no days of grace.

Italy, States of.... 3 months after date, and now, generally,
no days of grace.

Portugal 2 months after date, and now no days
of grace.

Prussia 1 month after date, and no days of grace.

Russia, other than {
St. Petersburg..} 3 months after date, with days of
grace as in preceding table—St.
Petersburg.

Spain 2 months after date, and now no days
of grace.

Sweden.....75 or 90 days after date, and no days of
grace.

West Indies.....31 days after acceptance, with 3 days of
grace.

Between foreign places, the usance of bills drawn at—

Altona, on Germany, is 14 days after sight.
" on France and Holland, is.. 1 month after date.

" on Italy, Spain & Portugal, is 2 months after date.

Amsterdam, on Germany, is 14 days after sight.

" on Danzig, Konigs-
berg, and Riga, is... 30 days after sight.

Bills between
Foreign
Places.

Amsterdam, on Belgium & France, is	1 month after date.	Tables.
" on Italy, Spain, and		Bills between
Portugal, is.....		Foreign
Antwerp, on Germany and Switzer-		Places.
land, is	14 days after sight.	
" on Danzig, Konigsberg,		
and Riga, is	30 days after sight.	
" on France	1 month after date.	
" on Italy, Spain, and Portu-		
gal, is.....	2 months after date.	
Hamburg, on France & Holland, is		
" on Italy, Spain, and	1 month after date.	
Portugal, is	2 months after date.	
Leghorn, on Paris, is		
" on Hamburgh, Holland,	1 month after date.	
and Spain, is.....	2 months after date.	
" on Lisbon, is	3 months after date.	
Lisbon and Oporto, on Spain, is ...	15 days after sight.	
" " on France, is...	60 days after sight.	
" " on Holland and		
Germany, is	2 months after date.	
" " on Italy, is	3 months after date.	
Paris, on Prague, Hanover, and }	14 days after accept-	
Saxe-Weimar, is.....	ance.	
" on Austria and Bavaria, is...	15 days after date.	
" on Prussia and Russia, is ...	15 days after pre-	
" on Greece, Italy, and Hol-	sentation.	
land, is.....	30 days after date.	
Rotterdam, on Germany & Switzer-		
land, is	14 days after sight.	
" on Danzig, Konigsberg,		
and Riga, is	30 days after sight.	
" on France, is	1 month after date.	
" on Italy, Spain, and		
Portugal, is	2 months after date.	
Vienna, on Hamburgh, is	2 months after date.	

Days of Grace.

Of the days of grace in different countries, it may be observed generally that in Scotland, Ireland, England, Wales, the Colonies, and in the United States of America, there are three;* in South America, six and fifteen; in Mexico, twenty-four hours; in Russia, three days on bills at sight, and ten on bills payable after date, or at a fixed time; in the Ottoman Empire the days of grace are varied in number; and throughout France, Belgium, Lombardy, Tuscany, the two Sicilies, and other States where the French code has been introduced, there are none. Throughout the German States, we have likewise seen, there are no days of grace. In Spain and Portugal days of grace are now abolished. Formerly fourteen days were generally allowed on foreign, and eight on inland bills, but in some parts of the country, as in Cadiz, six only were allowed. When the bill was drawn at sight, or expressed payable at a certain fixed date, no days of grace were allowed, nor were they computed upon bills unaccepted at maturity. In Portugal, the days of grace allowed on foreign bills were six, and on inland bills fifteen, but if unaccepted, the bill was not entitled to any days of grace. In Norway, Sweden, and Denmark, days of grace have been recently abolished. In Norway, they were formerly ten in number; in Sweden, six and twelve; and, in Denmark, eight and ten. Further, on the point of days of grace, a reference may be made to the preceding tables, from which it will be observed that the tendency of modern legislation is to abolish days of grace altogether.

* In Chitty, 10th ed., 260, it is said that in England "it appears formerly to have been the practice, whenever a bill was drawn payable to the Excise, to allow six days beyond the three days of grace, if required by the acceptor, on payment, at the expiration of the six days, of one shilling to the clerk for his trouble; and in a case where the Commissioners of Excise, being the payees of such a bill, gave the drawee the above time, Lord Mansfield decided, that as this custom was a general one, engrafted on such bills, and known universally, the drawer was not discharged by such indulgence to the drawee. Wilford *v.* Hankin, at Guildhall, Sittings after Hilary Term, 1763, M. S.; 1 Esp. Dig., 4th ed., 714; Roscoe, 164. But the practice of the Excise allowing any extra days of grace does not now prevail." "It has been said that days of grace are not claimed on bank post bills, payable after sight; but they are certainly claimable."

THE OLD AND NEW STYLES OF COMPUTING TIME.

In the computation of time, however, there is, in one important country of Europe, a peculiarity to which we must necessarily allude. Old and New Style.

Throughout Russia, the Old Style or Julian Calendar is still in use. As contrasted with the New Style or Gregorian Calendar, it is now twelve days later, so that the first of the month in Russia corresponds with the thirteenth of the same month in England.* In computing the currency of the bill from places in Russia, it will, therefore, be necessary, when the instrument is payable after date, to allow twelve additional days, and in this part of his practice, if the foreign drawn bills received be numerous and diversified, the young banker will have the opportunity of making no inconsiderable acquisition to his geographical knowledge, creditable as that may have already been to him, in a general way. On the bill itself, the style is sometimes determined thus: "1/13," or "10/22."

In calculating the currency, the following is the rule laid down by Bayley, 249, on the authority of Marius and Beawes: "Upon a bill drawn at a place using one style, and payable at a place using the other, if the time be to be reckoned from the date, it shall be computed according to the style of the place at which it was drawn; otherwise, according to the style of the place where it is payable; and, in the former case, the date must be reduced or carried forward to the style of the place where the bill is payable, and the time reckoned from thence. Thus, on a bill dated the 1st of May, Old Style, and payable here two months after date, the time must be computed from the corresponding day of May, New Style—viz., May 13; and on a bill dated the 1st of May, New Style, and payable at St. Petersburg two months after date, from the corresponding day of

* From 1582 to 1700, difference 10 days.
 " 1700 , 1800, " 11 "
 " 1800 , 1900, " 12 "
 " 1900 , 2100, " 13 "

Computation.

April, Old Style—viz., April 19th.” The reasons for the distinction above stated are, that in the first case the payment bears reference to the date, which must necessarily depend upon the style of the country where the instrument is dated. In the other case, or when the bill is drawn payable otherwise than after date, the parties are understood to recognise the practice and laws of the place where the contract is to be performed. See *Marius*, 100.

But, with the exception of Russia, it may be said that all the nations of Europe, at least all those with which we are in the habit of negotiating bills, have now adopted the New Style of computation.*

In furnishing an explanation and history of these styles, of which the young banker should have some knowledge, it will be first of all necessary to refer to the mode of computing time under the old Roman Calendar.

Old Roman
Calendar.

By Romulus, who is said to have instituted the first Roman Calendar, the year was divided into ten months only.† It commenced with March, and contained in all 304 days. Afterwards two intercalary months were added, to make the year correspond with the solar year. By Numa Pompilius the year was divided into twelve months, according to the synodic revolution of the moon, having

* In Chitty, 10th ed., 253, it is stated that, besides Russia, “Greece, some of the cantons of Switzerland, and those countries of the East where the Greek Church predominates, retain the use of the Old Style.”

† Of these months four were dedicated to the tutelar deities of the Romans; the first, called Martius, to Mars; the second, Apriles, to Aphrodite or Venus; the third, Maius, to Maia, the most beautiful of the Pleiades; and the fourth, Junius, to Juno; while the remaining months were numbered Quintilis, Sextilis, September, October, November, and December. To these Numa Pompilius added the two months of Januarius, dedicated to Janus, and Februarius, named from Februa, by which designation Juno was invoked as the goddess of purification, and during which month the people were purified by an expiatory sacrifice, Februalia, from the sins of the year. At a subsequent period the months Quintilis and Sextilis were changed to Julius and Augustus, the first in honour of Julius Cæsar, the reformer of the calendar as above, and who was born in that month; and the second in honour of Augustus Cæsar, on account of his remarkable victories, and because he had entered on his first consulate in that month. By the Roman Senate an attempt was made to change the name of the following month, September, to that of Tiberius, but this was opposed by that emperor. By the Emperor Domitian his assumed name of Germanicus was given to it, then the Senate under Antoninus gave it his name; but, surviving these changes, with those by Commodus and the Emperor Tacitus, September, with the remaining months of the year, have

in all 354 days; and not long afterwards he, according to Pliny, Hist. Nat. xxxiv, 7, added another day to make the number odd, which was considered a more fortunate number. But as ten days, five hours, and forty-nine minutes were wanting to make the lunar year correspond with the solar year, Numa appointed that every second year a month should be inserted between the 23rd and 24th of February, consisting of 22 and 23 days alternately, so that 4 years contained 1465 days, or an average of $366\frac{1}{4}$ days. This, however, necessitated another correction. To effect this, it was ordered that every third period of 8 years should contain only 3 intercalary months of 22 days each, thus reducing the mean length of the year to $365\frac{1}{4}$ days. The additional month was called Mercedinus or Mercedonius, from *merces*, signifying wages, as this time was probably set apart for the payment of domestics. By the Roman people the additional month was styled Mensis Intercalaris or Februarius Intercalaris, in preference to the name originally assigned to it. The intercalating of this month was left to the discretion of the pontifices or pontiffs, to whom was committed the care of the calendar. By giving to this month a greater or lesser number of days, the pontiffs used to make the current year longer or shorter, as best suited the exigencies of the state or their own private interests.

To rectify the disorders which resulted from this method of reckoning, as well as the irregularities attending the division of the time itself, Julius Cæsar abolished the use of the intercalations, and formed, with the aid of Sosigenes, an astronomer of Alexandria, and Marcus Fabius, a new calendar, since known as the Julian, in honour of its

Julian
come down to us under the appellations which they respectively bore in the first Roman Calendar. By Numa, it may be observed, the beginning of the year was transferred from March to January, March being reckoned the second month, and the year closing with February, an arrangement which continued until 452 B.C., when the Decemviri introduced February into its present position in the calendar. With these changes originated the inappropriateness of the names of September, October, November, and December, signifying seventh, eighth, ninth, and tenth months, as thenceforth applied to the last four months of the year.

Julian
Calendar.

institutor. To restore the equinox to its proper place in March of the following year, he ordered 2 months to be inserted between November and December in the current year, appropriately known as the year of confusion, which also, containing the intercalary month of 23 days which fell into it, was thus composed of 15 months or 445 days.*

By this calendar, formed B.C. 47, the year was adjusted according to the course of the sun. The number and names of the months, excepting Quintilis, henceforth called Julius, were retained unaltered. Adopting the Greek computation, the number of days assigned to the year was 365 and a quarter, the quarter of a day being disposed of by an intercalated day in February every fourth year called bissextile, because the sixth day before the Kalends of March was reckoned twice, and denominated in later times "Leap year," from its leaping forward a day more than the other years. On a comparison with the true time of the commencement of the equinoxes it was, however, discovered that the 365 days and a quarter exceeded the time by about eleven minutes, so that for every Julian or solar year the equinox receded eleven minutes, or a day in about 130 years. In consequence of this, at the time of the Council of Nice, A.D. 325, the vernal equinox had taken place on 21st March, and in 1582 it had retrograded to the 11th of that month.

In order to restore the equinox to its former place, Pope Gregory XIII caused ten days to be thrown out of the latter year, between the 4th and 15th of October, and as the error of the Julian intercalation was now found to amount to 3 days in 400 years, he ordered the intercalations to be omitted on all the centenary years excepting those which are multiples of 400. By this amended calendar, in reality projected by Aloysius Lilius, a physician of Verona, but known, from its promulgator, as the Gregorian Calendar, or, as it is now more generally called, the re-

Gregorian
Calendar, or
New Style.

* The disorder into which the estimated periods of the year had at this time fallen will be seen from Cicero's Letters to Atticus, liber x, epist. xvii.

formed calendar or New Style, the length of the solar year is fixed at 365 days, 5 hours, 49 minutes, and 12 seconds. According to observations of Zach, De Lalande, and Delambre, the average length of the tropical year is about twenty-seven seconds less, making a difference of one day only in the space of three thousand years. New Style.

The brief issued by Pope Gregory, abolishing the Julian Calendar in all Catholic countries and introducing the reformed one in its stead, was, it may be said, at once acted upon in Italy, France, Spain, Portugal, Holland, and the Low Countries. By the Catholic cantons of Switzerland the New Style was accepted in 1583, by the Catholic States of Germany in 1584, by Poland in 1586, and by Hungary in 1587. Its reception by Protestant countries was not until a much later date, the Protestant States of Germany adopting it in 1700, Denmark in the same year, the Protestant cantons of Switzerland in 1701, and Sweden in 1753. In Scotland it was adopted from the beginning of 1600, by an Act of the Privy Council in December 1599. In England it was after much opposition, and not until fruitless attempts had been made at various intervals, that the introduction of the new calendar was effected. This object not having been attained until the year 1751, a period of 170 years had thus elapsed from the time that the Gregorian alteration had taken place, so that the Old Style had gained about a day more upon the course of the sun. It was consequently enacted that instead of ten days eleven days should be cancelled, and these were dropped between the 2nd and 14th of September in the above-mentioned year, a loss which, it is recorded, so exasperated the multitude as to lead them for some time afterwards to parade the streets with flags bearing the inscription, "Give us back our eleven days." Amongst the various rejected schemes at this time there was one which proposed that an Act of Parliament should be passed declaring that there should be no leap year for forty years, so that the ten days might be imperceptibly lost, and the Old Style reduced to

New Style.

the New without any sensible variation in the fixed time of the festivals of the Church.

By the same Act, the 24 Geo. II, cap. 23, which introduced the reformed calendar, the beginning of the year was changed from the 25th of March to the 1st of January, for on the former of these dates the legal and ecclesiastical year had, from the fourteenth century, commenced, though it was not uncommon in general writing to begin the year on the 1st of January. To obviate mistakes, indeed, the practice for a long time preceding the change of style had been to write both years, as 1st February, 168⁸/₉ or 1st February, 1688–9, meaning the year 1689, if begun in January, or 1688, if begun in March. It may, perhaps, be almost unnecessary to add, that now all nations using either the Old or New Style begin the year on the 1st of January.*

* There has been considerable doubt as to the season at which the primeval year instituted at the creation began. The weight of opinion amongst chronologers and astronomers seems to lie between the vernal and autumnal equinox, Josephus, Scaliger, Petavius, Usher, and others contending for the latter, while Philo, Eusebius, Cyril, Augustine, Kepler, Capellus, Jackson, and others contend, with, perhaps, a greater show of probability, for the former. Of the ancient nations, it may be stated that the Chaldaeans, Babylonians, Medes, Persians, Armenians, and Syrians, as well as the Latins and Romans before the time of Numa, began the year about the vernal equinox, while it may be interesting to add that the aboriginal inhabitants of America commence their year upon the first appearance of the new moon of the vernal equinox.

The year of the creation, or anno mundi, which has been used by Christian and Jewish writers, cannot be considered as a fixed point. By the Jews the creation is placed 3,760 years and three months before the commencement of our era. The date adopted in the margin of the authorised English version of the Scriptures fixes the creation at 4,004 B.C.; but some, such as the early Alexandrian Christians, have placed it at 5,502 B.C., while the Greeks and Russians fix it at 5,508 B.C. The different opinions regarding the period of the commencement of the world have been estimated at one hundred and forty in number, though some chronologers have stated that the variations in this respect might be swelled to three hundred, excluding the belief of some of the ancient philosophers that the world was eternal, as well as the hypotheses of a few modern savans, whose ideas as to its extreme antiquity must be doubtlessly hailed as wonderfully rational for those of “outer barbarians” by the Chinese, who date the commencement of their empire alone at 41,000 years B.C., and estimate the distance of time from the creation at some hundreds of thousands of years.

The works on chronology in various languages are numerous, and those best known in English are Blair’s, Playfair’s, and Hales’s Treatises. In his “*De Emendatione Temporum*,” supplemented by the “*Thesaurus Temporum*,” Joseph Justus Scaliger, a distinguished French scholar, first explained the Julian Period satisfactorily, and to him is due the credit of having established a sound and comprehensive system of chronology.

PART VIII.

NUMERALS.

The numbers of a language admit of a variety of classifications, such as: Collective—a couple, a dozen, a score, etc.; Proportional—double, treble, fourfold, etc.; Fractional—half, fourth, two-thirds, etc.; Repetition—once, twice, thrice, etc.; Cardinal and Ordinal.

The Cardinal number, as its name, from the Latin *cardinalis*, implies, is the fundamental, chief, or principal number; or, in the words of the old lexicographers, is that “which expresses positively how many things there are, as 1, 3, 7, 10, etc.”; and the Ordinal number, from the French word *ordinal*, “qui détermine l’ordre,” is that which marks order or succession, as 1st, 3rd, 7th, 10th, etc. These numerals, given in the principal languages of Europe, we shall first of all furnish in detail, and then, for the greater convenience of the banker, present at one view a comparative list of the Cardinal numbers.

Subjoined to each set of numerals will also be found the names of the days and months, and likewise some of the modes adopted in expressing the currency of bills of exchange.

FRENCH.

CARDINAL NUMBERS.

Un	1	Douze	12	Trente	30
Deux	2	Treize	13	Quarante	40
Trois	3	Quatorze	14	Cinquante	50
Quatre	4	Quinze	15	Soixante	60
Cinq	5	Seize	16	Soixante-dix, or,	
Six	6	Dix-sept	17	Septante	70
Sept	7	Dix-huit	18	Quatre-vingt, or	
Huit	8	Dix-neuf	19	Huitante	80
Neuf	9	Vingt	20	Quatre-vingt-dix, or,	
Dix	10	Vingt-un, or, Vingt-		Nonante	90
Onze	11	et-un	21	Cent	100
		Cent-un, or, Cent-et-un			101
		Mille			1000
		Million			1,000,000

In France, it may be mentioned, the term billion, "milliard," signifies one thousand millions, while with us it is a million of millions; and the term "trillion," signifying with us a million of million of millions, is in France expressive of one thousand billions, or one thousand times a thousand millions.

Jour	Day.
Semaine	Week.
Mois	Month.
Année	Year.
À présentation	On demand.
À vue	At sight.
Deux mois de date	2 months after date.
Trente jours de date	30 days after date.
Trente jours d'aujourd'hui	30 days after date.
Trente jours du courant	30 days after date.
Trente jours de vue	30 days after sight.
À la fin du courant	{ At the end of the current month.
À usance	At usance.

FRENCH.

ORDINAL NUMBERS.

Le premier, la première.....	1st	Le la dix-septième	17th
— second, la seconde, or, deuxième.....	2nd	— dix-huitième.....	18th
Le la troisième.....	3rd	— dix-neuvième	19th
— quatrième	4th	— vingtième	20th
— cinquième	5th	— vingt-unième, or, vingt- et-unième	21st
— sixième	6th	— trentième	30th
— septième	7th	— quarantième	40th
— huitième	8th	— cinquantième	50th
— neuvième.....	9th	— soixantième	60th
— dizième	10th	— septantième, or, soix- ante-dixième.....	70th
— onzième	11th	— huitantième, or, quatre- vingtième	80th
— douzième.....	12th	— nonantième, or, quatre- vingt-dixième	90th
— treizième	13th	— centième	100th
— quatorzième	14th		
— quinzième	15th		
— seiizième	16th		
Le la cent-unième		101st	
— deux-centième		200th	
Le millième		1000th	
— millionième		1,000,000th	
— dernier, la dernière		The last.	

DAYS.

Dimanche	Sunday.	Mardi	Tuesday.	Jeudi.....	Thursday.
Lundi	Monday.	Mercredi... Wednesday.		Vendredi ...	Friday.
	Samedi.....			Saturday.	

MONTHS.

Janvier.	Mai.	Septembre.
Fevrier.	Juin.	Octobre.
Mars.	Juillet.	Novembre.
Avril.	Aout, or, Aoust.	Décembre.

The month Septembre, and three following months, are sometimes contracted 7^{bre}, 8^{bre}, 9^{bre}, and 10^{bre}, or X^{bre}.

ITALIAN.

CARDINAL NUMBERS.

Uno—Una.....	1	Quattordici	14	Cinquanta — Vin-	
Due.....	2	Quindici	15	quanta..... 50	
Tre	3	Sedici	16	Sessanta	60
Quattro	4	Diecisette — Dicias-		Settanta	70
Cinque	5	sette	17	Ottanta	80
Sei	6	Dieciotto	18	Novanta — Nonanta	90
Sette	7	Diecineove — Dician-		Cento	100
Otto	8	nove	19	Due cento — Due-	
Nove	9	Venti	20	gento	200
Dieci	10	Vent'uno	21	Tre cento	300
Undici	11	Venti due	22	Mille	1000
Dodici—Duodici ...	12	Trenta	30	Due Milla	2000
Tredici	13	Quaranta	40		
		Cento mila		100,000	
		Un milione.....			1,000,000

Giorno	Day.
Settimana.....	Week.
Mese	Month.
Anno.....	Year.
À presentazione	On demand.
À vista	At sight.
Due mesi di dato, or, A due mesi dopo data.....	2 months after date.
Due mesi di vista	2 months after sight.
Trenti giorni di dato.....	30 days after date.
A tutto Febbrajo prossima	{ "In all, February next," or at the end of February next.
Alla fine del mese corrente	{ At the end of the current month.
Ad uso	At usance.

ITALIAN.

ORDINAL NUMBERS.

Il primo	1st	Il décimo terzo ...	13th	Il quarantésimo ... } 40th
— segundo	2nd	— — — quarto..	14th	— quadragésimo... } 40th
— terzo	3rd	— — — quinto...	15th	— cinquantésimo . } 50th
— quarto	4th	— — — sexto ...	16th	— quinquagésimo . } 50th
— quinto	5th	— — — séptimo..	17th	— sessantésimo ... } 60th
— sexto	6th	— — — ottávo ..	18th	— sessagésimo ... } 60th
— séptimo	7th	— — — nono ...	19th	— settantésimo ... } 70th
L'ottávo	8th	— ventésimo—	vigesimo .. 20th	— settuagésimo ... } 70th
Il nono	9th	— — —	—	L'ottantésimo } 80th
— décimo	10th	— ventésimo primo	21st	L'ottuagésimo..... } 80th
L'undécimo	11th	— trentésimo. } 30th	Il novantésimo ... } 90th	
Il duodécimo...	12th	— trigésimo } 30th	— nonagésimo ... }	
Il centésimo			100th	
— millésimo			1,000th	
— diéci millésimo.....			10,000th	

DAYS.

Domenica	Sunday.	Mercoledì	Wednesday.
Lunedì	Monday.	Giovédì	Thursday.
Martedì	Tuesday.	Venerdì	Friday.
Sabato..... Saturday			

MONTHS.

Gennajo.	Maggio.	Settembre.
Febrero.	Giugnio.	Ottobre.
Marzo.	Luglio.	Novembre.
Aprile.	Agosto.	Dicembre.

SPANISH.

CARDINAL NUMBERS.

Uno—Una	1	Catorce	14	Ochenta	80
Dos	2	Quince	15	Noventa	90
Tres	3	Diez y seis	16	Cien—Ciento... ...	100
Quatro—Cuatro. .	4	Diez y siete	17	Docientos—Docienta	200
Cinco	5	Diez y ocho.....	18	Trecientos.....	300
Seis	6	Diez y nueve	19	Quatrocientos	400
Siete.....	7	Viente	20	Quinientos	500
Ocho.....	8	Viente y uno	21	Seiscientos	600
Nueve	9	Treinte	30	Setecientos	700
Diez	10	Quarente—Cuarente ...	40	Ochocientos	800
Once.....	11	Cincuenta—Cincuenta..	50	Novecientos	900
Doce.....	12	Sesenta	60	Mil.....	1,000
Trece	13	Setenta	70		

In the Spanish, as well as in the Portuguese, French, Italian, and Swedish languages, when two or more numbers are joined together, the greatest always goes first, as in the above numbers: *Viénte y uno*, twenty and one, or 21.

Letras de cambio	Bills of exchange.
Una dia	A day.
Una semana	A week.
Un més.....	A month.
Año	Year.
Los meses	Months.
Por todo, or, Por fin de.....	At the end of.
À presentacion	On demand.
À la vista	At sight.
Dias vista.....	Day's sight.
Dias data, or fecha	Day's date.
Sesenta dias precizos*	" Sixty days fixed."
À uso	At usance.
Uso y medio	Usance and a half.
Dos usos	Two usances.

* As we have seen in a former part of this volume, the effect of the word "precizos" is to exclude days of grace.

SPANISH.

ORDINAL NUMBERS.

Primero.....	1st	Undecimo, or, oncéno	11th
Segundo	2nd	Duodecimo, or, docéno.....	12th
Tercero	3rd	Decimo tertio, or, trecéno.....	13th
Quarto	4th	— quarto, or, catorcéno. 14th	
Quinto	5th	— quinto, or, quincéno.. 15th	
Sexto	6th	— sexto 16th	
Septimo.....	7th	— septimo 17th	
Octavo	8th	— octavo 18th	
Nono, or, noveno.....	9th	— nono 19th	
Decimo, or, decéno.....	10th	Vigésimo, or, vienténo	20th
Trigesimo, or, treinteno			30th
Quadragesimo, or, quarenteno			40th
Quinquagesimo, or, cincuenteno.....			50th
Sexagésimo, or, sesenteno			60th
Septuagésimo, or, setenténo			70th
Octogésimo, or, octuagésimo, or, ochenteno.....			80th
Nonagesimo, or, noventeno.....			90th
Centesimo, or, ciento.....			100th
Docentesimo, or, dociente.....			200th
Trecentesimo, or, trecienteno			300th
Quadragentesimo, or, quatrocientos.....			400th
Quingentesimo, or, quintenteno.....			500th
Milesimo.....			1,000th

DAYS.

Domingo	Sunday.	Miercoles	Wednesday.
Lunes	Monday.	Juevés	Thursday.
Martes	Tuesday.	Viernes	Friday.
Sabado.....		Saturday.	

MONTHS.

Enero.	Mayo.	Setiembre.
Febrero.	Junio.	Octubre.
Marzo.	Julio.	Noviembre.
Abril.	Agosto.	Déciembre.

PORTUGUESE.

CARDINAL NUMBERS.

Hum—Huma—Hua	1	Vinte	20
Dous—Dois—Duas	2	Vinte-e-hum	21
Tres	3	Trinta	30
Quatro	4	Quarenta	40
Cinco	5	Cincoenta	50
Seis—Seys	6	Sessenta—Secenta	60
Sette	7	Setenta	70
Oito—Outo	8	Oitenta—Outenta	80
Nove	9	Noventa	90
Dez	10	Cem—Cento	100
Onze	11	Cento-e-hum	101
Doze	12	Duzentos	200
Treze	13	Trecentos	300
Quatorze—Catorze	14	Quatro centos	400
Quinze	15	Quinhentos	500
Dezaseis—Dez e seys	16	Seis centos	600
Dezasette—Dez e sette	17	Sette centos	700
Dezoito—Dez e outo	18	Oito centos	800
Dezanove	19	Nove centos	900
Mill			1,000

Dia	Day.
Semana	Week.
Mez	Month.
Anno	Year.
Por tudo, or, à fim de	At the end of.
À presentação	On demand.
À vista	At sight.
Dois mezes data, or, à doús mezes de data	{ 2 months after date.
Trinta dias vista	30 days after sight.
À usó	At usance.
À usó e meyo	At usance and a half.

PORTUGUESE.

ORDINAL NUMBERS.

Primeiro	1st	Decimo sexto	16th
Segundo	2nd	—— septimo	17th
Terceiro	3rd	—— oitavo	18th
Quarto	4th	—— nono	19th
Quinto	5th	Vintecimo—Vinteino	20th
Sexto—Seisto	6th	Trintecimo—Trinteino	30th
Septimo—Settemo	7th	Quarentecimo—Quarenteino ..	40th
Oitavo—Outavo	8th	Cincoentecimo—Concoenteino ..	50th
Nono	9th	Sessentecimo—Secenteino ...	60th
Decimo	10th	Setentecimo—Setenteino ...	70th
Ondecimo	11th	Oitentecimo—Outenteino ...	80th
Dozeno	12th	Noventecimo—Noventeino...	90th
Trezeno	13th	Centecimo.....	100th
Catorzeno	14th	Duzentecimo.....	200th
Quinzeno.....	15th	Trezentecimo	300th
Milesimo.....		I,000th	

DAYS.

Domingo	Sunday.	Quarta Feira.....	Wednesday.
Segunda Feira.....	Monday.	Quinta Feira.....	Thursday.
Terça Feira	Tuesday.	Sesta Feira	Friday.
Sabbado.....			Saturday.

MONTHS.

Janeiro.	Mayo.	Septembro.
Fevreiro.	Junho.	Outubro.
Março.	Julho.	Novembro.
Abril.	Agosto.	Decembro.

HUNGARIAN.

CARDINAL NUMBERS.

Egy		Tizen hat	16
Kettő	2	Tizen héte	17
Három	3	Tizen nyolc	18
Négy	4	Tizen kilenc	19
Öt	5	Husz	20
Hat	6	Huszonegy	21
Hét	7	Harminc	30
Nyolc	8	Negyven	40
Kilenc	9	Otven	50
Tiz	10	Hatvan	60
Tizenegy	11	Hetvan	70
Tizen Kettő	12	Nyolevan	80
Tizen Három	13	Kilencven	90
Tizen Négy	14	Száz	100
Tizen öt	15	Százegy	101
Ezer			1000

Nap	Day.
Hét	Week.
Hó	Month.
Ev	Year.
Kivánatra	On demand.
Azonnal	At sight.
Nap után	After date.
A mai nap után két óra	2 months after date.
Láttamozás után harminc napra ...	30 days after sight.
Folyó hó végén	At the end of present month.
Szokottmodon	At usance.

HUNGARIAN.

ORDINAL NUMBERS.

Első.....	1st	Tizenhetedik.....	17th
Második	2nd	Tizennyolcadik.....	18th
Harmadik	3rd	Tizenkilencedik	19th
Negyedik	4th	Huszadik	20th
Ötödik.....	5th	Huszonegyedik.....	21st
Hatodik	6th	Harminczadik	30th
Hetedik	7th	Negyvenedik.....	40th
Nyolcadik	8th	Ötvenedik	50th
Kilencedik	9th	Hatvanadik	60th
Tizedik	10th	Hetvenedik	70th
Tizenegyedik.....	11th	Nyolcvanadik	80th
Tizenkettédik	12th	Kilenczvenedik	90th
Tizenharmadik	13th	Száزادik	100th
Tizennegyedik	14th	Szazegyedik	101st
Tizenötödik.....	15th	Ezredik	1000th
Tizenhatodik	16th		

DAYS.

Vasárnap.....	Sunday.	Szerda	Wednesday.
Hetfő	Monday.	Csütörtök.....	Thursday.
Kedd	Tuesday.	Péntek	Friday.
Szombat.....			Saturday.

MONTHS.

Januarius.	Majus.	September.
Februarius.	Junius.	October.
Marcius.	Julius.	November.
Aprilis.	Augustus.	December.

GERMAN.

CARDINAL NUMBERS.

Ein	1	Sechzehn	16
Zwei	2	Siebenzehn—Siebzehn	17
Drei.....	3	Achtzehn	18
Vier.....	4	Neunzehn	19
Fünf	5	Zwanzig	20
Sechs—Sex.....	6	Ein und Zwanzig	21
Sieben.....	7	Dreisig.....	30
Acht	8	Vierzig	40
Neun	9	Fünfzig	50
Zehn	10	Sechzig	60
Elf—Eilf.....	11	Siebenzig—Siebzig	70
Zwölf	12	Achtzig	80
Dreizehn	13	Neunzig	90
Vierzehn.....	14	Hundert	100
Fünfzehn.....	15	Tausend	1000
Eine million.....			1,000,000

Sola wechsel	Sole bill.
Prima wechsel.....	First bill.
Secunda wechsel.....	Second bill.
Tertia wechsel.....	Third bill.
Tag	Day.
Woche	Week.
Monat	Month.
Fahr	Year.
Nach sicht, or Bei Vorzeigung	On demand.
A vista	At sight.
Drei monate nach dato, or, Drei monathe nach dato, or, Drey monaten nach dato, or, Drey monaten nach heute	{ 3 months after date.
Dreizig Tagen nach gesicht.....	30 days after sight.
Ende dieses monats.....	{ At the end of this month.
Medio dieses monats	{ In the middle of this month.
Den ersten Februar kunftigen Jahrs	{ The 1st of February next year.
A uso	At usance.

GERMAN.

ORDINAL NUMBERS.

Der erste, the, or Am ersten,	1st	Fünfzehnte	15th
on the..		Sechzehnte	16th
Zweite	2nd	Siebenzehnte—Siebzehnte ...	17th
Dritte	3rd	Achtzehnte	18th
Vierte	4th	Neunzehnte	19th
Fünfte	5th	Zwanzigste	20th
Sechste	6th	Ein und Zwanzigste.....	21st
Siebente, or, Siebte	7th	Dreisigste	30th
Achte	8th	Vierzigste	40th
Neunte.....	9th	Fünfzigste	50th
Zehnte	10th	Sechzigste.....	60th
Elfte—Eilfte	11th	Siebenzigste—Siebzehnte.....	70th
Zwölfta	12th	Achtzigste.....	80th
Dreizehnte	13th	Neunzigste	90th
Vierzehnte	14th	Hundertste	100th
Tausendste			1000th

The word *Am* (above *Am ersten*—on the 1st) is a contraction of *An dem*—on the. When used with *Am* “on the,” the numerals throughout terminate with the letter *n*. They are also sometimes contracted, thus: *den 1^{ten}* on the 1st, *den 2^{ten}* on the 2nd, and so on.

DAYS.

Sonntag	Sunday.	Mittwoch	Wednesday.
Montag	Monday.	Donnerstag	Thursday.
Dienstag	Tuesday.	Freitag	Friday.
Samstag or Sonnabend		Saturday.	

MONTHS.

Januar, or Jänner,	Mai.	September.
Februar.	Juni, or, Junius.	October, or, Oktober.
März, or, Maerz.	Juli, or, Julius.	November.
April.	August.	December, or, Dezember.

The Germans have other names for the months descriptive generally of the seasons, as *Frühling Monat*, or spring month (April); *Herbst Monat*, or harvest month (September), &c.; but the above are always used in business.

DUTCH.

CARDINAL NUMBERS.

Een	1	Zestien.....	16
Twee	2	Zeventien	17
Drie	3	Achtien-Agtien.....	18
Vier	4	Negentien	19
Vijf	5	Twintig	20
Zes	6	En-en-Twintig	21
Zeven	7	Dertig	30
Acht—agt	8	Veertig	40
Negen	9	Vijftig	50
Tien.....	10	Zestig	60
Elf	11	Zeventig	70
Twaalf.....	12	Achtig—Tachtig—Taggentig....	80
Dertien	13	Negentig	90
Veertien	14	Honderd	100
Vijftien	15	Honderd-tien	110
Duizend.....			1000

Dag.....	Day.
Week	Week.
Maand	Month.
Jaar.....	Year.
Op vertoon	On demand.
Zigt, a vista	At sight.
Twee Maanden na dato.....	2 months after date.
Dertig dagen na zigt, or, gezigt	30 days after sight.
Op den laatsten van Januarij.	On the last day of January.
A Uso, or Volgens Usantie ...	At usance.

DUTCH.

ORDINAL NUMBERS.

Eerste	1st	Zestiente	16th
Tweede	2nd	Zeventieme	17th
Derde	3rd	Achtiente—Agtiente	18th
Vierde	4th	Negentiende	19th
Vijfde	5th	Twintigste	20th
Zesde	6th	Een en Twintigste	21st
Zevende	7th	Dertigste	30th
Achtste—Agtste	8th	Veertigste	40th
Negende	9th	Vijftigste	50th
Tiende	10th	Zestigste	60th
Elfde	11th	Zeventigste	70th
Twaalfde	12th	Achtigste—Tachtigste—Tag-	
Dertiende	13th	gentigste	80th
Veertiende	14th	Negentigste	90th
Vijftiende	15th	Honderste	100th
Duizendste		1000th.	

DAYS.

Zondag	Sunday.	Woensdag	Wednesday.
Maandag	Monday.	Donderdag	Thursday.
Dingsdag	Tuesday.	Vrydag	Friday.
Zaturdag		Saturday.	

MONTHS.

Januarij.	May—Mei.	September.
Februarij.	Juni.	October.
Maart.	Julij.	November.
April.	Augustus.	December.

D'eerste April	The 1st April.
De tweede Januarij	The 2nd January.
Den laatsten Januarij	On the last day of January.
Op ten tweeden Julij	On the 2nd July.

DANISH.

CARDINAL NUMBERS.

Een—Eet	1	Sexten—Sejsten.....	16
To	2	Sytten	17
Tre—Trende	3	Atten	18
Fire	4	Nitten	19
Fem	5	Tyve	20
Sex	6	Een-og-tyve	21
Syv	7	Tredive	30
Aatte—Otte	8	Fyrgetive—Fyrretyve	40
Ni	9	Halvtres—Halvtredsindstyve	50
Ti	10	Tres—Tredsindstyve.....	60
Ellevé	11	Halvfiers—Halvfjerdesindstyve ...	70
Tolv	12	Fürs—Firsindstyve	80
Tretten	13	Halvems—Halvfemsindstyve	90
Fjorten	14	Hundredre	100
Femten	15	Hundredre-og-een, eet.....	101
Tusende, or Tusinde		I,000	
En millim		I,000,000	

Een gang	Once.	Förste gang.....	First time.
To gang	Twice.	Anden gang	Second time.
Tre gang.....	Thrice.	Tredie gang	Third time.

Dage		Day.
Uger		Week.
Maaned		Month.
Aar		Year.
Paa anfordrierg.....		On demand.
A vista		At sight.
Tre dage efter sight		3 days after sight.
To maaneder efter dato.....		2 months after date.
Ved slutningen af Januar, or, Med } Januar maaneds udgang		At the end of January.
A uso		At usance.

DANISH.

ORDINAL NUMBERS.

Det den første.....	1st	Det den sextende—Sejstende	16th
Det andet—Den anden.....	2nd	——— syttende	17th
Det den trædie	3rd	——— attende	18th
——— fjerde	4th	——— nittende	19th
——— femte	5th	——— tyvende	20th
——— sjette—Siette	6th	——— een og tyvende	21st
——— syvende	7th	Tredife	30th
——— attende	8th	Fyrretyvende—Fyrgetyvende	40th
——— niende	9th	Halvtredsindstyvende	50th
——— tiende	10th	Tredsindstyvende.....	60th
——— ellefte	11th	Halvfjerdesindstyvende	70th
——— tolote	12th	Firsindstyvende	80th
——— trettende	13th	Halvfemsindstyvende	90th
——— fjortende	14th	Hundrede	100th
——— femtende	15th	Hundrede og første	101st
Den det to hundrede			200th
Tusendste			1,000th

DAYS.

Söndag.....	Sunday.	Onsdag.....	Wednesday.
Mandag...	Monday.	Thorsdag.....	Thursday.
Tirsdag.....	Tuesday.	Fredag.....	Friday.
Löverdag			Saturday.

MONTHS.

Januar.	Mai.	September.
Februar.	Juni.	October.
Marts.	Juli.	November.
April.	August.	December.

SWEDISH.

CARDINAL NUMBERS.

En—Ett	1	Sexton	16
Twä.....	2	Sjutton.....	17
Tre	3	Aderton	18
Fyra	4	Nitton	19
Fem.....	5	Tjuge—Tjugu.....	20
Sex	6	Tjugeen—Tjugu ett	21
Sju	7	Tretti—Trettio	30
Atta.....	8	Förti—Fyrtio	40
Nie—Nio	9	Femti—Femtio	50
Tie—Tio.....	10	Sexti—Sextio	60
Elfva	11	Sjutti—Sjuttio.....	70
Tolf.....	12	Atti—Attio	80
Tretton	13	Nitti—Nittio	90
Fjorton	14	Hundra—Ett hundra.....	100
Femton	15	Tusen—Ett tusen	1,000

Dag	Day.
Weeka	Week.
Manad	Month.
Ar	Year.
Pa Anfordring.....	On demand.
Vid sight	At sight.
Tre dagar efter sight	3 days after sight.
Sex weckor ifran dato	6 weeks after date.
Twä manader ifran dato	2 months after date.
Wid Januari mänado slut.....	At the end of January.
A uso.....	At usance.

SWEDISH.

ORDINAL NUMBERS.

Förste—Första	1st	Sextonde	16th
Andre—Andra	2nd	Sjuttonde.....	17th
Tredje	3rd	Adertonde	18th
Fjerde	4th	Nittonde	19th
Femte	5th	Tjugonde.....	20th
Sjette	6th	Tjuge första	21st
Sjunde	7th	Trettionde	30th
Attonde	8th	Förtionde	40th
Nionde..	9th	Femtionde	50th
Tionde.....	10th	Sextionde	60th
Elfte.....	11th	Sjuttionde	70th
Tolvte	12th	Attionde	80th
Trettionde	13th	Nittionde.....	90th
Fjortonde	14th	Hundrade	100th
Femtonde	15th	Tusende	1,000th

DAYS.

Sondag	Sunday.	Onsdag	Wednesday.
Måndag.....	Monday.	Thorsdag	Thursday.
Tisdag	Tuesday.	Fredag	Friday.
Loerdag.....		Saturday.	

MONTHS.

Januari.	Mai, or, Maj.	September.
Februari.	Juni, or, Junius.	October.
Mars, or, Martii.	Juli, or, Julius.	November.
April.	Augusti.	December

NORWEGIAN.

CARDINAL NUMBERS.

En	1	Seisten	16
To	2	Sytten	17
Tre	3	Atten	18
Fire	4	Nitten	19
Fem	5	Tyve	20
Sex	6	En og Tyve	21
Syv	7	To og Tive	22
Otte	8	Tredive	30
Ni	9	Fireti	40
Ti	10	Femteti	50
Elleve	11	Sexteti	60
Tolv	12	Sytteti	70
Tretten	13	Otteti	80
Fjorten	14	Nitteti	90
Femten	15	Hundre	100
Tusin.....			1,000

Dag	Day.
Uge	Week.
Maaned.....	Month.
Aar.....	Year.
Paa forlangende.....	On demand.
Avista	At sight.
Tre dage efter sight.....	3 days after sight.
To maaneder efter dato	2 months after date:
Den fjortende Mai	The 14th May.
Den femtende Junii	The 15th June.
Efter behov	At usance.

NORWEGIAN.

ORDINAL NUMBERS.

Förste	1st	Seistende	16th
Anden	2nd	Syttende	17th
Tredie	3rd	Attende	18th
Fjerde	4th	Nittende	19th
Femte	5th	Tyvende	20th
Sjette	6th	En og Tyvende	21st
Syvende	7th	Tredivte—Tredifte.....	30th
Ottende	8th	Firtiende	40th
Niende	9th	Femtiende	50th
Tiende	10th	Sextiende	60th
Ellevte	11th	Syttiende	70th
Tolvte	12th	Ottiende	80th
Trettende	13th	Nittiende	90th
Fjortende	14th	Hundrede	100th
Femtende	15th	Tusinde	1,000th

DAYS.

Söndag	Sunday.	Onsdag	Wednesday.
Maandag	Monday.	Torsdag	Thursday.
Tiersdag	Tuesday.	Fridag	Friday.
Löverdag		Saturday.	

MONTHS.

Januarii.	Mai.	September.
Februarius	Junii.	October.
Marts.	Juli.	November.
April.	August.	December.

RUSSIAN.

CARDINAL NUMBERS.

Odeen	1	Shestnadzat	16
Dva.....	2	Semnatzat	17
Tree	3	Vosemnatzat	18
Tschetire	4	Davetnazat	19
Piat	5	Dvatza	20
Shest .. .	6	Dvatza-odeen.....	21
Sem.....	7	Tredzat	30
Vosem.....	8	Sorok	40
Deviat.....	9	Piatdesat	50
Desiat	10	Shestdesat	60
Odinnatzat.....	11	Semesat	70
Dvenadzat	12	Vosemdesat.....	80
Trenadzat	13	Devianosto	90
Cheterinadzat.....	14	Sto	100
Paznatzat	15	Tizatz .. .	1,000

Den	Day.
Nedela	Week.
Mesiatz	Month.
God.....	Year.
Po bziskam	On demand.
Po prediavienii	At sight.
Gato .. .	After date.

RUSSIAN.

ORDINAL NUMBERS.

Pervuy	1st	Shestnadzaty.....	16th
Vtoroy	2nd	Semnadzaty	17th
Tretye	3rd	Vosemnadzaty	18th
Chetyvorty	4th	Devatnadzaty	19th
Piaty	5th	Dvadzaty	20th
Shestoy	6th	Dvadzat-pervuy	21st
Sedmoy	7th	Tredzaty	30th
Ossmoy	8th	Sorokovoy.....	40th
Deviaty	9th	Piatdesiaty	50th
Desiaty	10th	Shestidesiaty.....	60th
Odenatzaty	11th	Siemidesiaty	70th
Dveynadzaty	12th	Ossmidesiaty.....	80th
Trenadzaty	13th	Devianosty	90th
Cheterynodzaty	14th	Soty	100th
Piatnadzaty.....	15th	Soty-pervuy	101st
Tysiatchy		i,000th	

DAYS.

Vos Resenya	Sunday.	Treda.....	Wednesday.
Ponedielnik.....	Monday.	Chetverg	Thursday.
Vtornik	Tuesday.	Piatnitsa	Friday.
Soobota.....		Saturday.	

MONTHS.

Janvar.	Mai.	Sentyabra.
Fevralya.	Junya.	Oktjabr.
Mart.	Julya.	Noyabr.
Aprail.	Avgust.	Dekabr.

TURKISH.

CARDINAL NUMBERS.

Bir	1	Onalti	16
Iki	2	Onyedi	17
Utch	3	Onsekiz	18
Deort	4	Ondokouz	19
Besh	5	Yigirmi	20
Alti	6	Yigirmi-bir	21
Yedi	7	Otouz	30
Sekiz	8	Kerk	40
Dokouz	9	Elli	50
On	10	Altmesh	60
Onbir	11	Yetmish	70
Oniki	12	Seksen	80
Onutch	13	Doksan	90
Ondeort	14	Yuz	100
Onbesh	15	Yuz-bir	101
Bin		I,000	

Guùn	Day.
Hafta	Week.
Ay	Month.
Senah	Year.
Gheorundukde	On demand, at sight.
Gheorundukden songra	After sight.
Tarikden songra	After date.
Tarikden utch ay songra	3 months after date.
Gheorundukden altmesh guùn songra	60 days after sight.
Ghelegek ayen sonounda	At the end of next month.

TURKISH.

ORDINAL NUMBERS.

Biringi	1st	Onaltingi	16th
Ikinci	2nd	Onyedinci.....	17th
Uchinci	3rd	Onsekizingi	18th
Deortinci.....	4th	Ondokouzingi	19th
Beshinci	5th	Vigirmingi.....	20th
Altinci.....	6th	Vigirmi-biringi.....	21st
Yedinci	7th	Otouzingi	30th
Sekizingi.....	8th	Kerkingi	40th
Dokouzingi	9th	Ellinci	50th
Ongi.....	10th	Altmeshingi	60th
Onbiringi	11th	Yetemishingi.....	70th
Onikingi	12th	Sekseningi.....	80th
Onutchingi	13th	Doksaningi	90th
Ondeortinci.....	14th	Yuzingi	100th
Onbeshinci	15th	Yuz-biringi	1,001st
Biningi.....			1,000th

GUUNLER—DAYS.

Pazar	Sunday.	Tcharshamba.....	Wednesday.
Pazar ertesi.....	Monday.	Pershembaba.....	Thursday.
Sali	Tuesday.	Giumaa	Friday.
Giumaa ertesi.....			Saturday.

AYLAR—MONTHS.

Kenouni sani	January.	Temouz.....	July.
Shoubat	February.	Avosdos.....	August.
Mart	March.	Iloul	September.
Nisan	April.	Teshrini evel	October.
Mayis	May.	Teshrini sani.....	November.
Haziran, or, Heziran... June.		Kenouni evel	December.

COMPARATIVE VIEW

CARDINAL NUMBERS

	FRENCH.	ITALIAN.	SPANISH.	PORTUGUESE.	HUNGARIAN.	GERMAN.	
1	Un	Uno—Una	Uno—Una	Hum—Huma—Hua	Egy	Ein	1
2	Deux	Due	Dos	Dous—Dois—Duas	Kettő	Zwei	2
3	Trois	Tre	Tres	Tres	Három	Drei	3
4	Quatre	Quattro	Quatro—Cuatro	Quatro	Négy	Vier	4
5	Cinq	Cinque	Cinco	Cinco	Öt	Fünf	5
6	Six	Sei	Seis	Seis—Seys	Hat	Sechs—Sex	6
7	Sept	Sette	Siete	Sette	Hét	Sieben	7
8	Huit	Otto	Ocho	Oito—Outo	Nyolc	Acht	8
9	Neuf	Nove	Nueve	Nove	Kilenc	Neun	9
10	Dix	Dieci	Diez	Dez	Tiz	Zehn	10
11	Onze	Undici	Once	Onze	Tizenegy	Elf—Elif	11
12	Douze	Dodici—Duodici	Doce	Doze	Tizen Kettő	Zwölf	12
13	Treize	Tredici	Trece	Treze	Tizen Három	Dreizehn	13
14	Quatorze	Quattordici	Catorce	Quatorze—Catorze	Tizen Négy	Vierzehn	14
15	Quinze	Quindici	Quince	Quinze	Tizen öt	Fünfzehn	15
16	Seize	Sedici	Diez y seis	Dezaseis—Dez e seys	Tizen hat	Sechzehn	16
17	Dix-sept	Dieciséte—Diciassette	Diez y siete	Dezasette—Dez e sette	Tizen hét	Siebenzehn—Siebzehn	17
18	Dix-huit	Dieciotto	Diez y ocho	Dezoito—Dez e outo	Tizen nyolc	Achtzehn	18
19	Dix-neuf	Diecinueve—Dicianove	Diez y nueve	Dezanove	Tizen kilenc	Neunzehn	19
20	Vingt	Venti	Viente	Vinte	Husz	Zwanzig	20
21	Vingt-un—Vingt-et-un	Vent'uno	Viente y uno	Vinte-e-hum	Huszonegy	Ein und Zwanzig	21
30	Trente	Trenta	Treinte	Trinta	Harminc	Dreisig	30
40	Quarante	Quaranta	Quarente—Cuarente	Quarenta	Negyven	Vierzig	40
50	Cinquante	Cinquanta Vinquanta	Cincuenta—Cinquenta	Cincoenta	Ötven	Fünfzig	50
60	Soixante	Sessanta	Sesenta	Sessenta—Secenta	Hatvan	Sechzig	60
70	Soixante-dix—Septante	Settanta	Setenta	Setenta	Hetvan	Siebenzig—Siebzig	70
80	Quatre-vingt—Huitante	Ottanta	Ochenta	Oitenta—Outenta	Nyolcvan	Achzig	80
90	Quatre-vingt-dix—Nonante	Novanta—Nonanta	Neventa	Noventa	Kilencven	Neunzig	90
100	Cent	Cento	Cien—Ciento	Cem—Cento	Száz	Hundert	100

OF THE PRECEDING
TO ONE HUNDRED.

	DUTCH.	DANISH.	SWEDISH.	NORWEGIAN.	RUSSIAN.	TURKISH.	
1	Een	Een—Eet	En—Ett	En	Odeen	Bir	1
2	Twee	To	Twä	To	Dva	Iki	2
3	Drie	Tre—Trende	Tre	Tre	Tree	Utch	3
4	Vier	Fire	Fyra	Fire	Tschetire	Deort	4
5	Vijf	Fem	Fem	Fem	Piat	Besh	5
6	Zes	Sex	Sex	Sex	Schest	Alti	6
7	Zeven	Syv	Sju	Syv	Sem	Vedi	7
8	Acht—Agt	Aatte—Otte	Atta	Otte	Vosem	Sekiz	8
9	Negen	Ni	Nie—Nio	Ni	Deviat	Dokouz	9
10	Tien	Ti	Tie—Tio	Ti	Desiat	On	10
11	Elf	Elleve	Elfva	Elleve	Odinnatzat	Onbir	11
12	Twaalf	Tolv	Tolf	Tolv	Dvenadzat	Oniki	12
13	Dertien	Tretten	Tretton	Tretten	Trenadzat	Onutch	13
14	Veertien	Fjorten	Fjorton	Fjorten	Cheterinadzat	Ondeort	14
15	Vijftien	Femten	Femton	Femten	Paznatzat	Onbesh	15
16	Zestien	Sexten—Sejsten	Sexton	Seisten	Shestnadzat	Onalti	16
17	Zeventien	Sytten	Sjutton	Sytten	Semnatzat	Onyedi	17
18	Achtien— Agtsien	Atten	Aderton	Atten	Vosemnatzat	Onsekiz	18
19	Negentien	Nitten	Nitton	Nitten	Davetnazat	Ondokouz	19
20	Twintig	Tyve	Tjuge— Tjugu	Tyve	Dvatzzat	Yigirmi	20
21	Een-en— Twintig	Een-og-Tyve	Tjugeen— Tjugu ett	En-og-tyve	Dvatzzat-odeen	Yigirmi-bir	21
30	Dertig	Tredive	Tretti— Trettio	Tredive	Tredzat	Otouz	30
40	Veertig	Fyrgetive Fyrretive	Förti—Fyrtio	Fireti	Sorok	Kerk	40
50	Vijftig	Halvtres— Halvtredsindstyve	Femti— Femtio—	Femteti	Piatdesat	Elli	50
60	Zestig	Tres— Tredsindstyve	Sexti— Sextio	Sexteti	Shestdesat	Altmesh	60
70	Zeventig	Halvfiers— Halvfjerdesindstyve	Sjutti— Sjuttio	Sytetti	Semdesat	Yetmish	70
80	Achtig— Tachtig— Taggentig	Fürs— Firsindstyve	Atti— Attio	Otteti	Vosemdesat	Seksen	80
90	Negentig	Halvems— Halvfemsindstyve	Nitti— Nittio	Nitteti	Devianosto	Doksan	90
100	Honderd	Hundredre	Hundra	Hundre	Sto	Yuz	100

ADDENDA.

Page 13. "Companies Acts, 1862 to 1879."—And there is further the amending Act of 24th March, 1880, the 43 and 44 Vic., cap. 19, being "An Act to amend the Companies Acts of 1862, 1867, 1877, and 1879," the whole of which Acts "may be referred to as the Companies Acts, 1862 to 1880," and which last amending Act of 1880 relates to the return of accumulated profits in reduction of paid-up capital, and to the power of the Registrar to strike off the Register the names of such companies as are not carrying on business, or are not in operation.

Page 37. "Married Women. Liabilities of Wife."—The decision in this case, *Pike v. Fitz-Gibbon*, was approved, and followed in *Flower v. Buller, Chan. Div.*, 22nd, 23rd, 24th, and 27th July, 1880.

Page 39. "Private Partnerships. Liabilities."—And where the name of an individual is common with that of his firm, and he carries on no business apart from the firm, the presumption is that a bill signed by him in such a name is the bill of the firm, but this presumption may be rebutted by proof that the bill was signed for his own private purposes, and was not intended as that of the firm. B., carrying on business, as a chemical manufacturer, in his own name, took into partnership M., as a dormant partner, the business continuing in the name of B. only. He, without the authority, and in fraud of M., signed accommodation bills, and the proceeds were paid into the same banking account with B.'s own private moneys and

those of the firm. The transactions were never entered into the ledger either before or after the partnership, but were entered in the private cash book, to which M. had no access, and were never put into the partnership cash book, to which M. might have had access. B. afterwards drew from the banking account, for his own private purposes, sums exceeding in amount the proceeds of these bills. The bills being dishonoured, liability was sought to be attached to M.; but it was held by the Court of Appeal, affirming the judgment of the Common Pleas Division, that the above facts rebutted the presumption that the bills were those of the firm, and, consequently, that M. was not liable. In the course of an elaborate judgment of the Court, delivered by Lord Justice Thesiger, the following observations were made:—"As was said by the Court, in giving judgment in the case of *Wintle v. Crowther*, 1 C. and J., 318, 'where a partnership name is pledged, the partnership, of whomsoever it may consist, and whether the partners are named or not, and whether they are known or secret partners, will be bound, unless the title of the person who seeks to charge can be impeached,' and the authorities generally, both English and American, are uniform in support of the view. There is no difference in this respect between the dormant and the ostensible partner, and, when once it is established that a name common to a firm and an individual member of it has been put to a bill as the name of the firm, there is no difference between the liability of partners carrying on business in such a name and the liability of partners carrying on business in a name which bears in itself the stamp and evidence of a partnership. It may, perhaps, be argued that, in the latter case, the bona fide holder, without notice, is induced by the name itself to trust a firm, and is therefore entitled to have the responsibility of all the members of the firm, while an individual name would suggest no responsibility other than that of the individual whose name it is; but when it is remembered

that firm names are often used by individual traders, while individual names are often used by firms, the argument practically comes to nothing, and a common principle applicable to both cases remains alone consistent with mercantile expediency and general law. But, assuming that there is no difference as matter of law between the two cases, there is, as a matter of evidence, a very real and very practical difference. A name in itself indicating a firm does not, except in rare instances, of which the case of *Stephens v. Reynolds*, 5 H. and N., 513, 8 W. R., C. L. Dig. 9, is an example, leave open any doubt as to the meaning of a signature in such name; but a name which in itself indicates an individual is, notwithstanding the effect of any legal presumption, ambiguous, and there are likely to be few, if any, cases where the decision of the jury or of the Court will be rested upon the presumption alone. The present case is no exception to the rule, and the presumption in favour of the plaintiffs, arising from the fact that B. carried on no business separate from that of the partnership, sinks into comparative insignificance by the side of the additional facts which are proved in the case." The *Yorkshire Banking Company, and the Leeds and County Bank v. Beatson and Mycock*, 11th March, 1880.

Page 104, f. n.—An Act, 43 and 44 Vic., cap. 9, "to remove doubts as to the meaning of expressions relative to time occurring in Acts of Parliament, deeds, and other legal instruments," was passed on 2nd August, 1880, its provisions being that: "Whereas it is expedient to remove certain doubts as to whether expressions of time occurring in Acts of Parliament, deeds, and other legal instruments, relate in England and Scotland to Greenwich time, and in Ireland to Dublin time, or to the mean astronomical time in each locality, be it therefore enacted," etc.: "1. Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred shall, unless it is otherwise specifically stated, be held, in the case

of Great Britain, to be Greenwich mean time ; and, in the case of Ireland, Dublin mean time. 2. This Act may be cited as the Statutes (Definition of Time) Act, 1880."

Page 166. "Circular Note. Precautions."—The plaintiff, a holder of circular notes, having lost these and the letter of indication, all of which were together, gave notice of the circumstance to the defendants, the issuers, and requested them to stop payment of the notes. The notes were afterwards cashed by some of the correspondents of the issuers, and thereupon the plaintiff brought his action. The letter of indication contained the following notice :—"Particular attention is requested to the following note: For the security of the holder, it is indispensably necessary that this letter should be kept apart from the circular notes, which should on no account be signed, except in presence of the banker from whom payment is required, to whom this letter should also be produced. The full amount at the current rate of exchange will then be paid, without any deduction in respect of commission." It was held by Pollock, B., that the condition as to preserving notes and letter separate was an extremely reasonable protection, and that if, in breach of this, the notes were lost, then the question was, which of two innocent persons should suffer, and the rule applied that he should suffer by whose negligent conduct the loss had arisen ; that, while it would not be fair to say that the plaintiff had dealt improperly with the notes, to allow him to recover would be to give up all the substance of the rule, and that applying such principles, not on the ground of estoppel, but on the ground that the contract had not been fulfilled, and that there had been a breach of it in a material part by the plaintiff which had led to the loss, the plaintiff could not recover, but must bear the loss. *Rhodes v. London and County Bank, Ex. Div., May, 1880.*

Page 175. "Acceptor. Incomplete." Bill accepted with blank space for drawer's name.—The personal representative

of a deceased bona fide holder may fill up the blank in his own name as drawer. And, in an administration suit, the personal representatives of a deceased holder of bills with such blank spaces were allowed to claim for the full amount, without further proof of the debt beyond evidence that the acceptor was to some extent indebted to the holder. In *re estate of J. P. Duffy*, deceased, Dutch *v. O'Leary*, 4th February, 1880, in 5 L. R., Ir. 92, where the judgment of the Vice-Chancellor is given as follows : "In this case of the administrators of Fritz Rothschild, the claim is put forward on foot of two instruments as bills of exchange of the late John Patrick Duffy, each for £75, both dated the same day—one at three months, and the other at four. These documents, evidently intended for bills of exchange, appear never to have been drawn, and they were found among the papers of the late Mr. Rothschild (in whose handwriting the body of these documents has been proved to be), by his executors. *Viva voce* evidence, so far as it was available, has been given, and it goes some way to show that at the time of these bills being prepared there was some debt due from Mr. Duffy to Mr. Rothschild. The case is one involved in great obscurity, as both the parties who could have stated the facts are dead. The law of the case is plain enough, that a bill of exchange accepted in blank can be filled up by any bona fide holder of it as the drawer. It was, therefore, open to Mr. Rothschild to put his name to these instruments as drawer, and make them perfect bills of exchange. It was held, in *Scard v. Jackson*, 34 L. T. N. S., 65 n. a., if authority were needed, that the executors or administrators of a bona fide holder of such a document are in the same position in this respect as the holder whom they represent, and the administratrix in that case was held entitled to put her name as drawer to an undrawn bill, and make it a complete bill of exchange. I must hold, therefore, these instruments to be bills of exchange for the amounts mentioned in them.

I have no evidence of what the consideration was, but there is nothing to show that they were without consideration or for an inadequate consideration. If they had been found perfected, it would have been impossible for me, under these circumstances, to have reduced the claim upon them below the amount for which they were accepted. I must, therefore, allow the claim."

Page 244. "Payment. Banker."—If a bill, to order of drawer, be drawn by a firm of two or more partners carried on in the name of an individual, as "John Smith," the signatures as drawer and indorser should not, to prevent trouble and inconvenience in negotiation, be by different partners, but the partner signing as drawer should also sign as indorser, it being the custom of London bankers to refuse payment of bills in which the two signatures differ, unless a full and satisfactory explanation be given of the difference in the handwriting.

Page 413.—"Indorsation. Variation."—Cheques drawn payable to the order of a person individually, but indorsed by him on behalf of another, or of a company, should be returned for proper indorsement.

Sometimes a cheque is drawn payable to "A. B., per C. D." In practice it is not unusual, in such a case, for the indorsement to be in C. D.'s name only, though the most approved mode is to indorse thus:—

A. B.,

Per C. D.,

or,

Per pro A. B.,

C. D.

Cheques payable, as thus, to "J. Smith, or order," and indorsed John Smith; or to "John Smith, or order," and indorsed J. Smith, are in practice freely passed, though, of course, it is more correct and satisfactory for the indorser to sign in the mode as made payable.

Page xiii. The High Court of Justice and its Divisions.—By an order in Council, dated 16th December, 1880, to take effect at the end of thirty days after it has been laid before each House of Parliament, pursuant to the Supreme Court of Judicature Act, 1873, unless in the interval an address by either House be presented against its coming into operation, it is proposed that the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division be consolidated into one Division, to be called "The Queen's Bench Division," and that the Lord Chief Justice of England be President. It is likewise proposed that the offices of Lord Chief Baron of the Exchequer and Lord Chief Justice of the Common Pleas be reduced to an equality with the offices of the other Judges of the High Court who are not ex officio Judges of the Court of Appeal, the Lord Chief Justice of England to exercise all the powers and authorities heretofore exercised in connection with the offices of Chief Baron and Chief Justice of the Common Pleas, "unless such exercise thereof shall be contrary or repugnant to any express provision in any Act of Parliament contained." It may be mentioned that, to the change contemplated in this shape, some of the Judges dissented, and the views of the late Sir Alexander J. E. Cockburn, Lord Chief Justice of England, were thus expressed: "I am quite prepared to sacrifice old names and old associations for the sake of substantial good, though I do not think they are destitute of value; but I am wholly at a loss to see what will be gained by merging the three Common Law Divisions into one Court, and am satisfied that a Court of fifteen judges under a nominal president—for the authority of such a president would be no more than nominal—would not and could not work. My opinion is, that hopeless confusion would be the result. The fact is, the present state of things works extremely well when the judges can attend to their business in the Common Law Divisions. The reason why there are arrears is, that the

judges are scattered over the face of the country trying election petitions, or on extra and unnecessary circuits."

We have to add that, while this sheet is passing through the press (10th February, 1881), effect has been given to the above order, Lord Denman's motion in the House of Lords for an address to the Crown against the proposed change having been withdrawn; and in the House of Commons the order having, after debate, been affirmed, on a division, by 178 to 110.

In the House of Lords, it was explained by the Lord Chancellor that, when the Judicature Act of 1873 was passed, it was necessary, for the purpose of effecting an immediate transition, that the then Superior Courts should be taken as furnishing the main lines for the fresh distribution of business, hence the establishment of the five Divisions. That two of these, the Chancery and Admiralty, were in nature and machinery entirely distinct; but that with regard to the others—the Queen's Bench, the Common Pleas, and the Exchequer Divisions—the case was entirely different, their business being almost homogeneous. That a clause in the Judicature Acts expressly provided that, on a recommendation of the Council of Judges, it should be competent for the Crown, by order of Council, to unite any of the existing Divisions, and to abolish the office of Chief Baron or that of Chief Justice of the Common Pleas, as also the offices of Lord Chief Justice and Master of the Rolls. That, though it was true the late Lord Chief Justice of England condemned the proposed change, eighteen judges against seven were in favour of uniting the three Divisions of the High Court, and there was a large majority in favour of reducing the Chief Baron and the Chief Justice of the Common Pleas to an equality with the puisne judges. That all the judges in the Court of Appeal and the Chancery Division were in favour of the change, while a majority, or at least an equal number, of those in the Divisions immediately concerned were also favourable

And, with reference to the argument against abolishing ancient institutions, that to maintain a Chief Baron without an Exchequer Division, and a Chief Justice of the Common Pleas without any Common Pleas Division, would be, not retaining an old institution, but creating a new one. That, under the proposed arrangement, he did not doubt the most able men would always be obtainable for the public service; and he added that, since the making of the order in Council, a committee of judges and barristers had been working to put into proper shape those changes of procedure consequent upon the proposed reform. That, with regard to the opinion of the legal profession, he was informed that, at the recent meeting of members of the Bar, the majority against a change was not very great; whereas the Incorporated Law Society, representing the men most conversant with the interests of suitors, had expressed their satisfaction at the proposed alteration.

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